

# **Ethics**

## **A Principled Approach to The Ethics in Public Service Act**



### **WASHINGTON STATE EXECUTIVE ETHICS BOARD**

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# **THE EXECUTIVE ETHICS BOARD**

## ***Board Members***

Executive Ethics Board Members are appointed by the Governor as follows:

- (1) One member is a member of the classified service;
- (2) One member is a state officer or state employee in an exempt position;
- (3) One member is a citizen at large;
- (4) One member is a citizen selected from a list provided by the state auditor; and,
- (5) One member is a citizen selected from a list provided by the attorney general.

Except for those completing partial terms, members serve a single five-year term during which time they may not hold partisan or full-time nonpartisan elective office, make campaign contributions, or lobby **for any purpose**, except that they may attend public hearings and testify on matters relating to the ethics law.

(RCW 42.52.350 and RCW 42.52.380)

As a rule, The Executive Ethics Board meets monthly, except for August and December, on the second Friday of the month. The meetings are open to the public, and meeting agendas are posted 5-7 days prior to board meetings on our web site at [www.ethics.wa.gov](http://www.ethics.wa.gov).



## ***Statutory Authority***

The Board has broad authority for interpreting and enforcing the state's ethics law and is mandated to:

- Develop educational materials;
- Conduct ethics training;
- Adopt rules and policies implementing provisions of RCW 42.52;
- Issue advisory opinions;
- Investigate complaints; and,
- Impose sanctions for violations of the ethics law.

The Board also has subpoena authority, and the authority to administer oaths and affirmations, examine witnesses, and receive evidence. (RCW 42.52.360)

# **THE STATE'S ETHICS LAW**

**"THE ULTIMATE ANSWER TO ETHICAL PROBLEMS IN GOVERNMENT IS HONEST PEOPLE  
IN A GOOD ETHICAL ENVIRONMENT."**

**—JOHN F. KENNEDY**

## ***WHY AN ETHICS LAW?***

An ethics law establishes minimum standards of conduct while performing public duties, and seeks to remove doubts concerning violations of public trust and confidence, the impairment of independent judgment, and favoritism in the performance of public duties that can be created by outside or personal interests.

When adopting the Ethics in Public Service Act, the Legislature declared that "the citizens of the state expect all state officials and employees to perform their public responsibilities in accordance with the highest ethical and moral standards and to conduct the business of the state only in a manner that advances the public's interest."

## ***WHO IS SUBJECT TO THE ETHICS ACT?***

All state officers and employees are subject to the law. The law defines state officer as: "every person holding a position of public trust in or under an executive, legislative, or judicial office of the state." This includes judges of the superior court and court of appeals, justices of the supreme court, legislators (together with the secretary of the senate and the chief clerk of the house of representatives)<sup>1</sup>, state elected officials, chief executive officers of state agencies, members of boards, commissions or committees who have authority over a state agency or institution, and employees who are engaged in supervisory, policy-making or policy-enforcing work. It also includes any person who exercises or undertakes to exercise the power or function of a state officer.



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<sup>1</sup> The Executive Ethics Board does not have jurisdiction over legislative or judicial officials or employees.

## CORE ETHICAL PRINCIPLES

*“State officials and employees of government hold a public trust that obligates them, in a special way, to honesty and integrity in fulfilling responsibilities to which they are elected and appointed. Paramount in that trust is the principle that public office, whether elected or appointed, may not be used for personal gain or private advantage.” (RCW 42.52.900)*

- **Objectivity** - Public employees must place the public's interest before any private interest or outside obligation – choices need to be made on the merits.
- **Selflessness** - Public employees should not make decisions in order to gain financial or other benefits for themselves, their family, or their friends.
- **Stewardship** - Public employees have a duty to conserve public resources and funds against misuse and abuse.
- **Transparency** - Public employees must practice open and accountable government. They should be as open as possible about their decisions and actions, while protecting truly confidential information.
- **Integrity** - Public employees should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.



**“THE REPUTATION OF A THOUSAND YEARS IS DETERMINED BY THE CONDUCT OF ONE HOUR.”**

**—JAPANESE PROVERB**

## **OBJECTIVITY**

**PUBLIC EMPLOYEES MUST PLACE PUBLIC INTEREST BEFORE ANY PRIVATE INTEREST OR OUTSIDE OBLIGATION – CHOICES MUST BE MADE ON THE MERITS.**

- RCW 42.52.020, Activities incompatible with public duties
- RCW 42.52.030, Financial interests in transactions
- RCW 42.52.040, Assisting in transactions

### ***Conflicts of Interest***

**CONFLICT OF INTEREST LAWS DEFINE THE LINE BETWEEN PUBLIC DUTIES AND PERSONAL INTERESTS, INCLUDING FINANCIAL AND NON-FINANCIAL INTERESTS AND OBLIGATIONS.**

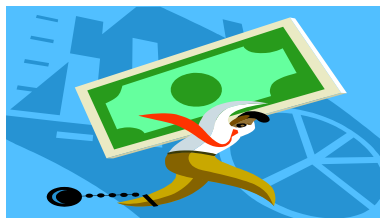
### ***Activities incompatible with public duties (RCW 42.52.020)***

Intended as a general conflict of interest provision, RCW 42.52.020 provides that:

“No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature that is in conflict with the proper discharge of the state officer’s or state employee’s official duties.”

### ***Financial interests in transactions (RCW 42.52.030)***

As a state officer or employee, you are prohibited from participating in certain transactions involving an entity in which you hold a beneficial or financial interest. RCW 42.52.030 prohibits:



- A state officer or employee from having a beneficial or financial interest in a contract, sale, lease, purchase or grant made by, through, or under the officer’s or employee’s supervision;



- A state officer or employee from accepting, directly or indirectly, any compensation, gift, or reward from any person beneficially interested in a contract, sale, lease, purchase or grant.
- A state officer or employee from participating in a transaction involving the state with a person of which the officer or employee is an officer, agent, employee or member, or in which the officer or member owns a beneficial interest.

However, if you are an officer or employee of an institution of higher education or the Spokane Intercollegiate Research and Technology Institute you may:

- Serve as an officer, agent, employee, or member, or on the board of directors, board of trustees, advisory board, or committee or review panel for any nonprofit institute, foundation, or fundraising entity;
- Serve as a member of an advisory board, committee, or review panel for a governmental or other nonprofit entity.

#### **What does “Participate” and “Transaction” mean?**

"Participation" must be both personal and substantial. However, the term is broadly defined and includes, but is not limited to approval, disapproval, decision, recommendation, the rendering of advice, or investigation.

"Transaction" is also broadly defined and includes a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that you believe, or have reason to believe:

- (i) Is, or will be, the subject of state action; or
- (ii) Is one to which the state is or will be a party; or
- (iii) Is one in which the state has a direct and substantial proprietary interest.

#### ***Assisting in transactions (RCW 42.52.040)***

You may also be prohibited from assisting others in transactions involving the state unless the assistance is part of your regular duties. RCW 42.52.040 prohibits:

- A state officer or employee from assisting another person, directly or indirectly, whether or not for compensation, in a transaction if:
  - The employee has participated in the transaction at any time; or,

- The transaction has been under the official responsibility of the officer or employee within a period of two years preceding such assistance.
- In addition, a state officer or employee may not share in compensation received by someone else for providing assistance that the employee is prohibited from providing.
- Finally, if a state officer or state employee is a partner, managing officer, or employee of an entity, that entity may not assist another person in a transaction if the state officer or state employee is prohibited from assisting in the transaction.



## Remedy

### **What do I do if I have a conflict of interest?**

The Ethics in Public Service Act does not prohibit private interests or the state employment of your family members. In several Advisory Opinions, the Board has advised that state officers and employees may resolve conflicts of interest by **disclosing** any interest that may be in conflict with his or her official duties and **abstaining from participation in any agency discussions or actions** on any issue where the interest may be affected.

**Remember** - Participation is very broadly defined and includes making recommendations or giving advice to decision makers. In addition, abstaining must be complete. Conflicts are not resolved by assigning decisions, including later oversight and follow up actions, to employees under your supervision. As a general rule, you should **disclose** potential conflicts to your supervisor or managers and let them decide how to best resolve the conflict. While not required in the law, written procedures, e.g. screening memos, can resolve any appearance that you were improperly involved in a prohibited transaction. Screening memos should be distributed to all participants in the transactions.

## **SELFLESSNESS**

**PUBLIC EMPLOYEES SHOULD NOT MAKE DECISIONS IN ORDER TO GAIN FINANCIAL OR OTHER BENEFITS FOR THEMSELVES, THEIR FAMILY, OR THEIR FRIENDS.**

- RCW 42.52.070, Special privileges
- RCW 42.52.140, Gifts
- RCW 42.52.150, Limitations on Gifts
- RCW 42.52.080, Employment after Public Service

### ***Special Privileges (RCW 42.52.070)***

As a state officer or employee, you cannot allow someone to do something that others are not allowed to do simply because of your position and authority. This provision states:

“Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.”

### ***Gifts (RCW 42.52.140)***

#### **THE GENERAL RULE**

**NEVER ACCEPT A GIFT, GRATUITY, OR ANYTHING OF VALUE IF THE GIFT, GRATUITY, OR THING OF VALUE COULD BE REASONABLY EXPECTED TO INFLUENCE YOUR VOTE, JUDGMENT, OR ACTION.**



The statute states:

“No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonable expected that the gift, gratuity, or favor would

influence the vote, judgment or action of the officer or employee, or be considered as part of a reward for action or inaction. “

### ***Limitations on gifts (RCW 42.52.150)***

Even if there is no reasonable expectation that a gift would influence a decision, most state officers and employees may only accept certain gifts, and in most situations, a \$50.00 gift limit applies. However, if you are in a position that: (1) negotiates or administers contracts; or (2) purchases goods or services, or (3) regulates, you are further limited in the gifts you may receive (see below for discussion on “Section 4” employees.)

“(1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty (\$50) dollars from a single source in a calendar year. ... The value of gifts given to an officer’s or employee’s family member or guest shall be attributed to the officer or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.”

**A. *There are certain items that a state officer or employee may receive because they are deemed “exempt” from the definition of gift under RCW 42.52.010(10). State officers and employees who participate in contracting or regulation, however, may not accept those items marked with an asterisk (\*):***

- Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;
- Items related to the outside business of the recipient that are customary and not related to the recipient’s performance of official duties;
- Items exchanged among officials or employees or a social event hosted or sponsored by a state officer or state employee for co-workers;
- Payments by a governmental or non-governmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity.\*
- Items a state officer or state employee is authorized by law to accept;
- Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide nonprofit professional, educational, or trade association or charitable institution.\*

- Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;
- Campaign contributions reported under 42.17 RCW;
- Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group; and
- Awards, prizes, scholarships, or other items provided in recognition, academic, or scientific achievement.

**B. *Then the statute allows a state officer and employee to receive gifts without regard to the \$50.00 limit if the officer or employee does not regulate or contract for goods and services, and if circumstances do not create the appearance of influence are as follows: (RCW 42.52.150(2), (3), and (5))***



- Unsolicited flowers, plants, and floral arrangements;
- Unsolicited advertising or promotional items of nominal value;
- Unsolicited tokens or awards of appreciation—plaques, trophies, desk items;
- Unsolicited items for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the use or acquisition of the item by the agency;
- Informational material, publications, or subscriptions related to official duties;
- Food and beverages at hosted receptions where attendance is related to official duties;

- Gifts, grants, conveyances, bequests and devises of real or personal property for deposit into the legislative international trade account, for promoting the expansion of tourism, or for the purpose of hosting an official conference specified in RCW 42.52.820;
- Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization;
- Unsolicited gifts from dignitaries in another state or a foreign country intended to be personal in nature; and
- Food and beverages on infrequent occasions in the ordinary course of state business.

#### **When are you considered a “Section 4” employee?**

You are a “Section 4” employee if you are:

- a) employed by a regulatory agency or an agency that seeks to acquire goods and services;
- b) your agency regulates or contracts with the person giving the gift; and
- c) you participate in the regulatory or contractual matters with that person.

The Section 4 gift restrictions apply to gifts from any entity potentially subject to being regulated, not just those currently regulated. Likewise if your duties include decisions about contracting or purchasing, the Section 4 gift restrictions would apply to gifts from any potential future contractor or vendor.



**C. *If you are considered a “Section 4” employee, these are the only gifts you may accept (RCW 42.52.150(4)). The \$50 limit does not apply to the following, but you may not accept any gift that is not included on this list.***

- Items from family members where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;
- Items related to the outside business of the recipient that are customary and not related to the recipient’s performance of official duties;

- Items exchanged among officials or employees or a social event hosted or sponsored by a state officer or state employee for co-workers;
- Items a state officer or state employee is authorized by law to accept;
- Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;
- Campaign contributions reported under 42.17 RCW;
- Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group;
- Awards, prizes, scholarships, or other items provided in recognition or academic or scientific achievement;
- Unsolicited advertising or promotional items of nominal value;
- Unsolicited tokens or awards of appreciation in the form of a plaques, trophies, desk items;
- Unsolicited items for the purpose of evaluation or review, if you have no personal beneficial interest in the use or acquisition of the item by the agency;
- Informational material, publications, or subscriptions related to the performance of official duties;
- Food and beverages at hosted receptions where attendance is related to official duties; and
- Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization.

## **Remedy**

### **What if I receive a gift that is prohibited?**

**Not accepting any gift is one sure way to know you are in compliance with the gift law. In the alternative, prohibited gifts may be returned to the sender or donated to charity within 30 days of receipt. If donated to charity, you may want to consider sending a letter to the giver indicating your actions. If ever in doubt, contact your ethics advisor or Executive Ethics Board staff for clarification. (See RCW 42.52.010(10)(g)).**

## ***Post-State Employment (RCW 42.52.080)***

**POST-STATE EMPLOYMENT RESTRICTIONS ARE DESIGNED TO ENSURE THAT A FORMER STATE OFFICER OR STATE EMPLOYEE DOES NOT OBTAIN AN ADVANTAGE AS A RESULT OF DECISIONS OR ACTIONS MADE WHILE IN PUBLIC SERVICE.**

*Post-state employment restrictions fall into one of three categories: a contract restriction, a beneficial interest restriction, and continuing restrictions. (RCW 42.52.080)*

### ***The Contract Restriction***

The contract restriction applies only to those state officers and state employees who are involved in the negotiation or administration of agency contracts. The restriction under RCW 42.52.080(1) prohibits a former state officer or state employee from accepting employment or receiving compensation from an employer if:

- The officer or employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that [the post-state] employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration; **and**,
- The contract or contracts have a total value of more than ten thousand dollars; **and**,
- The duties of the post-state employment include fulfilling or implementing, in whole or in part, the provisions of the contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of the contract or contracts.





### ***The Beneficial Interest Restriction***

The two-year beneficial interest restriction does not prohibit a former state officer or state employee from doing business with his or her former state agency for a period of two years. The restriction applies only to the acquisition of a beneficial interest in a contract or grant in which the employee participated. Under this provision, a former state officer or state employee may not:

- Within a period of two years following the termination of state employment, have a direct or indirect beneficial interest in a contract or grant that was expressly authorized or funded by specific legislative or executive action in which the former state officer or state employee participated.

### ***The Continuing Restrictions***

Several of the post-state employment restrictions are continuing. That is, there is no statutorily defined time limit that determines when these restrictions end. There are continuing restrictions on the following activities by former state officers and state employees:

- Accepting an offer of [post-state] employment or receiving compensation from a [post-state] employer if the officer or employee knows or has reason to believe that the offer or employment or compensation was intended to influence the officer or employee or as compensation or reward for the performance or nonperformance of a duty by the officer or employee during state employment.
- Accepting an offer of [post-state] employment or receiving compensation from a [post-state] employer **if circumstances would lead a reasonable person to believe** the offer has been made, or compensation given, for the purpose of influencing the performance or nonperformance of a duty by the officer or employee during state employment.
- Participating, at any time subsequent to state employment, whether or not for compensation, in any transaction involving the state in which the former state officer or state employee at any time participated during state employment.

## **STEWARDSHIP**

**PUBLIC EMPLOYEES HAVE A DUTY TO CONSERVE PUBLIC RESOURCES AND FUNDS AGAINST MISUSE AND ABUSE.**

- RCW 42.52.070, Special privileges (See Page 11)
- RCW 42.52.160, Use of persons, money, or property for private gain
- RCW 42.52.180, Use of public resources for political campaigns
- WAC 292-110-010, “De minimis” use of public resources

### ***Use of Resources***

**USE OF STATE RESOURCES FOR PRIVATE BENEFIT OR GAIN IS PROHIBITED UNLESS AN ALLOWABLE EXCEPTION WITHIN THE ETHICS LAW OR UNDER WAC 292-110-010. AGENCIES MAY NOT ADOPT LESS RESTRICTIVE STANDARDS.**

### ***Use of persons, money, or property for private gain (RCW 42.52.160)***

State officers and employees have access to many resources. You are expected to conserve public resources by using them only for your official job or to the benefit of the state.

“(1) No state officer or state employee may employ or use any person, money, or property under the officer’s or employee’s official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

(2) This section does not prohibit the use of public resources to benefit others as part of a state officer’s or state employee’s official duties.

(3) The appropriate ethics boards may adopt rules providing exceptions to this section for occasional use by the state officer or state employee, or de minimis cost and value, if the activity does not result in interference with the proper performance of official duties.”

### ***The Use of Resources Rule (WAC 292-110-010)***

A use of state resources that is reasonably related to the conduct of official state business does not violate RCW 42.52.160. In addition, an agency head or designee may authorize a use of state resources that is related to an official state purpose but not directly related to an employee’s official duty, for example, conducting an agency’s Combined Fund Campaign. Such uses shall be specifically authorized in writing and any use shall strictly conform to specific agency guidance.

The Executive Ethics Board has adopted guidelines for exceptions to the no personal use standard under RCW 42.52.160(1). **These exceptions are narrowly construed and do not apply to all uses of state resources.** The Board allows limited unofficial use if:

- There is little or no cost to the state;
- Any use is the most effective use of time or resources;
- There is no interference with the performance of official duties;
- The use is brief in duration and frequency;
- The use does not disrupt other state employees and does not obligate them to make a personal use of state resources; and
- The use does not compromise the security or integrity of state information or software.

***What does this mean in practical terms on a daily basis?***

This means that occasional local telephone calls for medical and dental appointments, child or elder care arrangements, transportation coordination, etc., are acceptable.

This means that occasional and brief personal e-mail messages are acceptable.

This does not mean state resources can be used for any purpose at any time, including time “off the clock.”

***Prohibitions***

Certain uses of state resources are prohibited regardless of whether there is no cost to the state and even if the use does not interfere with the performance of official duties. These uses include:

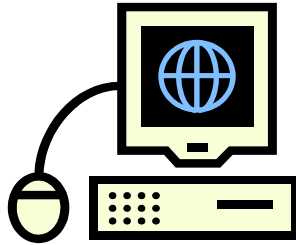
- Any use for the purpose of conducting an outside business, whether or not for profit.
- Any use for the purpose of assisting the campaign of any candidate for election to any office, or to oppose or promote a ballot proposition;
- Any use for commercial purposes such as advertising or selling;
- Illegal activities or activities incompatible with a professional workplace, e.g., accessing adult-oriented sites or gambling on the Internet;
- Lobbying activity unless authorized by law; and
- Any use to promote, support, or solicit for an outside organization or group unless the activity is approved by an agency head or his or her designee.

***Internet Use***

Any personal use of state provided Internet access must be both brief and infrequent. Extensive personal use of state provided access is not permitted.

In addition, your agency must have adopted a policy that specifically permits personal use of the Internet. See examples in Frequently Asked Questions.

Use of the Internet is permitted **ONLY IF THE USE IS** consistent with the de minimis standards **AND ONLY IF** the employee's agency has adopted a policy governing Internet access that is also consistent with de minimis standards. In addition, if your agency's policy has NOT been approved by the Executive Ethics Board, you may be subject to sanctions if you violate the Ethics Act *even if you abide by your agency's policy.*

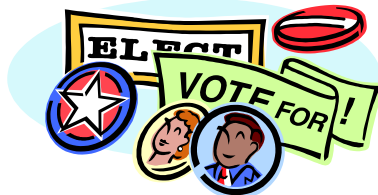


#### ***Other Standards You Need to Know About***

- No personal use may be made of state resources that are removed from a state facility, such as a laptop or notebook computer;
- Use of the Internet is limited to official business purposes, unless your agency has adopted an appropriate use policy; and,
- Reimbursement for personal use of state resources so that there is no actual cost to the state does not necessarily remedy the fact that a violation has occurred. Any system of reimbursement must be established by agencies in advance and approved by the Executive Ethics Board to be valid. WAC 292-110-010(6)

#### ***Use of Public Resources in Political Campaigns (RCW 42.52.180)***

The state's ethics law strictly prohibits the use of the facilities of a state agency to support or oppose candidates or ballot issues. Facilities of an agency are broadly construed to include, but are not limited to, stationery, postage, machines, equipment, use of state employees during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.



Keep in mind that you can violate the ethics law if you allow the use of public resources for political campaigns and do not act to stop the use.

Exceptions to this prohibition apply to elected officials and to activities that are the normal and regular conduct of a state agency. Contact the ethics office or your assigned Assistant Attorney General for guidance on whether an exception may apply to your activities.

**Electronic mail, facsimile transmissions, and voice mail are technologies that may create an electronic record, and therefore may be distinguished from other forms of communication such as telephone conversations. Electronic records also are reproducible, so they cannot be considered private. Such records may be subject to the public disclosure law, or legitimately may be disclosed for audit or management purposes. WAC 292-110-010(7)**

## **TRANSPARENCY**

**PUBLIC EMPLOYEES MUST PRACTICE OPEN AND ACCOUNTABLE GOVERNMENT. THEY SHOULD BE AS OPEN AS POSSIBLE ABOUT THEIR DECISIONS AND ACTIONS, WHILE PROTECTING TRULY CONFIDENTIAL INFORMATION.**

### ***Confidential Information (RCW 42.52.050)***

Do not disclose confidential information gained by reason of your official position or otherwise use confidential information for personal gain or benefit.

**Confidential information—Improperly concealed records.** (1) No state officer or state employee may accept employment or engage in any business or professional activity that the officer or employee might reasonably expect would require or induce him or her to make an unauthorized disclosure of confidential information acquired by the official or the employee by reason of the official's or employee's official position. (RCW 42.52.050(1))

No state officer or state employee may make a disclosure of confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another. (RCW 42.52.050(2))

No state officer or state employee may intentionally conceal a record if the officer or employee knew the record was required to be released under chapter 42.17 RCW, was under a personal obligation to release the record, and failed to do so.

This subsection does not apply where the decision to withhold the record was made in good faith. (RCW 42.52.050(4))

**Examples of common exemptions from public disclosure under chapter 42.56 RCW include, but are not limited to:**

- a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;
- b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy;
- c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (a) be prohibited to such persons by RCW [84.08.210](#), [82.32.330](#), [84.40.020](#), or [84.40.340](#) or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;
- d) credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;
- e) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;
- f) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;
- g) any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter [9A.44](#) RCW or sexually violent offenses as defined in RCW [71.09.020](#), which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW [40.14.070](#)(2)(b);

- h) License applications under RCW [9.41.070](#); copies of license applications or information on the applications may be released to law enforcement or corrections agencies; and
- i) Information revealing the identity of child victims of sexual assault who are under age eighteen. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator.

**Consult with your agency's public records officer or the assigned Assistant Attorney General on all public disclosure requests.**

### **INTEGRITY**

**PUBLIC EMPLOYEES SHOULD NOT PLACE THEMSELVES UNDER ANY FINANCIAL OR OTHER OBLIGATION TO OUTSIDE INDIVIDUALS OR ORGANIZATIONS THAT MIGHT INFLUENCE THEM IN THE PERFORMANCE OF OFFICIAL DUTIES.**

- RCW 42.52.020, Activities incompatible with public duties (See page 8)
- RCW 42.52.110, Compensation for official duties or nonperformance
- RCW 42.52.120, Compensation for outside activities
- RCW 42.52.130, Honoraria

### ***Outside Employment***

**NO STATE OFFICER OR STATE EMPLOYEE MAY RECEIVE ANY THING OF ECONOMIC VALUE UNDER ANY CONTRACT OR GRANT OUTSIDE OF OFFICIAL DUTIES.**

### ***Compensation for official duties or nonperformance (RCW 42.52.110)***

This provision limits receipt of compensation for official duties:

“No state officer or state employee may, directly or indirectly, ask for or give or receive or agree to receive any compensation, gift, reward, or gratuity from a source for performing or omitting or deferring the performance of any official duty, unless otherwise authorized by law except: (1) The state of Washington; ...”

However, if you work for an institution of higher education or the Spokane Intercollegiate Research and Technology Institute, you may also accept compensation for official duties from:

“... a governmental entity, an agency or instrumentality of a governmental entity, or a nonprofit corporation organized for the benefit and support of the state employee’s agency or other state agencies pursuant to an agreement with the state employee’s agency.”

***Conditions under which outside compensation may be accepted.  
(RCW 42.52.120(1))***

You may accept compensation under an outside contract or grant if:

- a) The contract or grant is bona fide and actually performed,
- b) the performance or administration of the contract is not within the course of your official duties, or is not within your official supervision,
- c) the performance of the grant is not prohibited by RCW 42.52.040 or by applicable rules governing outside employment for you,
- d) the contract is neither performed for nor compensated by any person from whom you would be prohibited by RCW 42.52.150(4) from receiving a gift,
- e) the contract or grant is not one expressly created or authorized by you in your official capacity, and
- f) the contract or grant would not require the disclosure of confidential information.



Many agencies have established policies in which an employee may accept outside employment. Please be sure to check with your agency before accepting outside employment.

***What if your outside work is for another state agency?***

Special standards govern receipt of a contract or grant with a state agency while you are otherwise employed by the state. These standards apply **whenever** a contract or grant is awarded or issued as a result of a non-competitive process,



or when the bid of a state officer or state employee is the only bid received in a competitive process.

- You must receive prior approval of the Executive Ethics Board before entering into a contract or grant. RCW 42.52.120(2)(b) and (c).
- You must provide all of the following information to obtain approval:
  - A description of your current official duties and responsibilities;
  - A statement of the work to be performed;
  - A copy of the proposed contract or grant;
  - The duration and dollar value of the contract, if applicable;
  - A statement that no state resources will be used to perform all or any of the work under a contract or grant;
  - A description of how the work will be performed without the use of state resources; and
  - A statement that the employing agency has reviewed or approved the outside contract under applicable rules or policies, if applicable.

**Approval may be granted by the Executive Director if the contract or grant clearly satisfies the conditions under RCW 42.52.120(1) and RCW 42.52.160(1). Otherwise, the contract will be submitted to the Executive Ethics Board at a regular meeting.**

**If approved, file a copy of the contract or grant with the ethics office within thirty (30) days of execution.**

Exempt from this requirement are situations in which:

- A state employee receives assistance through state or federal programs administered by the state when the employee is entitled to receive the assistance on the same basis as similarly situated citizens, and when the employee does not exercise discretionary judgment with regard to an assistance program for which he or she is otherwise eligible;
- A state employee contracts to perform teaching duties at a bona fide community college, vocational technical school or institution of higher learning, provided no state resources are used to perform the duties; there is no conflict with the performance of official duties, and the employee did not use his or her official position to influence the decision makers;
- A spouse of a state employee holds the contract with the state agency and the employee did not participate in the contract;
- A state employee of an institution of higher education is to provide expert witness services in state litigation provided no resources of the

higher education institution are used to perform the duties, there is no conflict with the performance of official duties and the employee did not use his or her official position to influence the contract; and

- A state employee of an institution of higher education or the Spokane Intercollegiate Research and Technology Institute receives a contract under conditions that complied with RCW 42.52.030(2). At the request of the Institution, the Board may advise the Institution if a specific contract or grant would raise significant conflict of interest concerns.

### ***Honoraria (RCW 42.52.130)***

**AN HONORARIUM MEANS MONEY OR THING OF VALUE OFFERED FOR A SPEECH, APPEARANCE, ARTICLE, OR SIMILAR ITEM IN CONNECTION WITH YOUR OFFICIAL ROLE IN STATE GOVERNMENT.**

*An honorarium may not be accepted unless specifically authorized by your agency.  
(RCW 42.52.130)*

An agency may not authorize receipt under any of these circumstances:

- a) The person offering the honorarium is seeking or is reasonably expected to seek contractual relations or a grant from the agency and you are in a position to participate in the terms or the award of the contract or grant.
- b) The person offering the honorarium is regulated by the agency and you are in a position to participate in the regulation.
- c) The person offering the honorarium (i) is seeking or opposing or is reasonably likely to seek or oppose enactment of legislation or adoption of administrative rules or actions, or policy changes by the state officer's or state employee's agency; and (ii) you may participate in the enactment or adoption.

### **More about honoraria...**

- You may use state time and resources to prepare materials for a speech or presentation for which an honorarium will be paid because the activity is related to your official role in state government.
- If your agency does not allow you to use state time and resources to prepare materials for a speech or presentation under RCW 42.52.130, any payment you receive is not an honorarium subject to the agency's approval, but rather outside compensation subject to RCW 42.52.120.

- An honorarium does not include payment for travel, lodging, or subsistence expenses which are gifts subject to RCW 42.52.150.

## **Complaints and Investigations**

The Board receives many ethics complaints. Any person, including any citizen, a state officer or a state employee, may file complaints. The Board may also initiate its own complaint, but normally reserves this authority to referrals from other state agencies, including the referral of whistleblower reports from the State Auditor.

Complaints must name a specific state officer or state employee and allege conduct that, if true, could violate the state's ethics law or rules adopted under it. The ethics law applies to individual state officers and state employees. *State agencies cannot violate the ethics law.* (RCW 42.52.410 and RCW 42.52.420)

During the course of an initial investigation, the respondent is notified of the alleged violation(s) and provided with an opportunity to respond. The results of the investigation may be presented to the Executive Director for the purpose of making an Order of Dismissal. Under RCW 42.52.425, the Board or the Executive Director may dismiss a complaint if any violation that may have occurred was:

- Not within the jurisdiction of the Board;
- Obviously unfounded or frivolous;
- Inadvertent and minor, or has been cured.



If dismissed by the Executive Director, the complainant has the right to ask for a review by the Board.

If not dismissed, the results of the investigation are presented to the Board for the purpose of making a reasonable or no reasonable cause determination. **The Board makes all reasonable cause/no reasonable cause determinations.** If the Board finds no reasonable cause, the complaint is dismissed.

## ***Settlements and Hearings***

If the Board finds reasonable cause, the matter is scheduled for a public hearing. Most cases, however, are resolved through informal and negotiated settlements.

A negotiated settlement may be reached either prior to or after a reasonable cause determination. All settlements are subject to final action by the Board, which may approve, modify, or reject the settlement. If the Board modifies a settlement agreement, the respondent has the opportunity to accept or reject those modifications. If the modifications are rejected, the normal hearing process continues. The intent of negotiated settlement is to resolve those matters alleged in an ethics complaint filed with the Board without having the added time and expense of litigation. A settlement does not purport to settle other claims or actions involving the state of Washington or its officers or employees.



### ***Potential Penalties***

By administrative rule, the Board has established criteria for civil penalties that may be levied for violations of the state's ethics law and rules adopted under this law. (WAC 292-120)

Potential penalties include:

- (1) A civil penalty not to exceed \$5000 per violation or three times the economic value of anything sought or received in violation of the ethics law;
- (2) Restitution; and,
- (3) Recovery of investigative costs.

Agencies have independent authority to implement disciplinary action for violations of the state's ethics law. (RCW 42.52.520) The Executive Ethics Board does not consult with agencies or offer advice on disciplinary action.

## **Contact Information**

For ethics advice, filing complaint information, Board advisory opinions, training and general information, please call Board staff at:

(360) 664-0871

Or send e-mail to [ethics@atg.wa.gov](mailto:ethics@atg.wa.gov)

Visit our website at:

[www.ethics.wa.gov](http://www.ethics.wa.gov)

## ***Other Resources***

### **Your Agency**

Many state agencies have established their own internal policies or administrative rules that relate to ethical issues and questions that are specific to the agency. It's a good idea to check these policies and rules first, particularly in the area of outside employment, to see what steps you should follow. A growing number of state agencies have their own ethics advisors. The ethics advisors can help resolve questions internally, or may consult with the Executive Ethics Board's office. Either way, the goal will be to resolve your ethics question informally.

Remember, your agency may adopt policies that are more restrictive than the requirements in the state's ethics law. If your agency adopts such a policy, you must comply with the agency policy.

### **The Attorney General's Office**

An agency's assigned Assistant Attorney General (AAG) is also another available resource. If you don't know who your assigned AAG is, call 360-753-6200.

## FREQUENTLY ASKED QUESTIONS

### Use of State Resources

**Q: Are there general guidelines for the use of state resources?**

A: Yes. All state officers and employees have a duty to ensure the proper stewardship of state resources, including funds, facilities, tools, property, employees and their time. Accordingly, the Ethics in Public Service Act states that resources under your official control may not be used for the private benefit or gain of a state officer, state employee, or another person. (See and RCW 42.52.160(1))

**Q: What types of state resources are covered under the ethics law?**

A: The guidelines on use of state resources apply to all resources under an employee's control including, but not limited to, facilities of an agency, state employees, computers, equipment, vehicles, and consumable resources. State resources also include state information, e.g., databases, employee lists. (See RCW 42.52.160(1) and RCW 42.52.180(1))

**Q: What exactly is a “private benefit or gain”?**

A: A private benefit or gain can range from avoiding a cost or expense by the use to using resources to support your outside business or paying a discounted government rate for a personal phone call. There are some uses that do not appear to have a cost but may result in private benefit or gain. For example, it may not cost a significant amount of money to use a state computer to access the Internet. Nevertheless, by making a personal use of a resource available to you only because you are a state employee, you are receiving a private benefit or gain.

**Q: I've heard that de minimis use is allowed. What is a de minimis use anyway?**

A: A de minimis use is an infrequent or occasional use that results in little or no actual cost to the state. An occasional brief local phone call to make a medical or dental appointment is an allowable de minimis use of state resources. The cost of a brief phone call is negligible and is not likely to interfere with your job. The following examples address “de minimis” use: (See WAC 292-110-010(3))

- **Example A:** An employee makes a telephone call or sends an e-mail message to his/her children to make sure that they have arrived home safely from school. This is not an ethical violation. So long as the call or e-mail is brief in duration, there is little or no cost to the state, i.e., your SCAN code is not used, and sending a brief message does not interfere with the performance of official duties.
- **Example B:** An employee uses his/her agency computer to send electronic mail to another employee wishing them a happy birthday. This is not an ethical

violation. The personal message is brief and does not interfere with the performance of official duties.

- **Example C:** Every spring a group of employees meets during lunch to organize an agency softball team. The meeting is held in a conference room that is not needed for agency business during the lunch hour. This is not an ethical violation. There is little or no cost to the state, the meeting does not interfere with the performance of official duties, and off site recreational activities such as softball teams can improve organizational effectiveness.

**Q: What does “promoting organizational effectiveness” really mean?**

A: Organizational effectiveness relates to an agency’s mission and encompasses activities that enhance or augment the agency’s ability to perform its mission. The Board recognizes that state agencies may allow employees to participate in activities that are not official state duties but promote organizational effectiveness by supporting a collegial work environment. The Board believes that so long as the employees who participate in the activity limit their use of state resources, then these activities would not undermine public confidence in state government. In addition, the Ethics Act normally prohibits the use of state resources to support outside organizations or groups, including charities, unless the support is part of the agency’s official duties. The Board’s rule allows agency heads to nevertheless approve a de minimis use of state resources for activity that promotes organizational effectiveness even if that activity may incidentally support a private organization. Agency heads are cautioned, however, that activity allowed under this rule may not involve a state agency’s endorsement or promotion of a commercial activity such as advertising or selling products. The following examples address “promoting organizational effectiveness.” (See WAC 292-110-010(3) and (6))

- **Example A:** An agency determines that an agency wide retirement lunch will enhance organizational effectiveness. The retirement lunch will last a half hour longer than the normal one hour lunch break. An employee uses his or her office computer to compose a flyer about the lunch, send a few reminder e-mails, and collect for a retirement present. This is not an ethical violation. The use supports organizational effectiveness and was approved by the agency. Since most of the activity takes place outside of normal working hours, it will not interfere with the performance of each employee's official duties. In addition, the employee's use of the office computer and printer will result in little or no cost to the state.
- **Example B:** An agency decides that attending a specific sporting event or going to a local amusement park as a group will promote organizational effectiveness. In order to organize the event the agency uses a very limited amount of state paid time and agency resources to send one email notifying employees of the event and to post flyers and discount coupons in a break room so that employees who attend can take advantage of the discounts available. The flyers and coupons promote a commercial organization, such as a local amusement park, or promote a specific event, such as a state employee appreciation day at a sporting event. This is not an ethical violation. Attending the sporting event or

going to an amusement park may improve employee morale, which supports organizational effectiveness. The agency approved this very limited use of resources and the activity falls within the de minimis use guidelines.

- **Example C:** An agency decides that attending a specific sporting event or going to a local amusement park as a group will promote organizational effectiveness. The agency uses state paid time and agency resources to distribute multiple flyers or multiple discount coupons to all agency employees. The flyers and coupons promote a commercial organization, such as a local amusement park, or promote a specific event, such as a state employee appreciation day at a sporting event. This is an ethical violation. While attending the sporting event or going to the amusement park may improve employee morale, the use of state resources exceeds the de minimis use guidelines. When there is no statutory authority for the use of state resources to support a private commercial product or organization, the extensive use of state resources for that activity undermines public confidence in state government.

**Q: Are there any uses of state resources that are prohibited?**

A: Yes. The allowance for de minimis use does not apply to the following uses: conducting an outside business; political or campaign activities; commercial uses like advertising or selling products; lobbying that is unrelated to official duties; solicitation on behalf of other persons unless approved by the agency head; and illegal or inappropriate activities. The following examples address prohibited uses. (See WAC 292-110-010(6))

- **Example A:** An employee operates an outside business. She makes an outside business call on her state telephone. The call is local. This is an ethical violation. The employee is conducting a private business on state time using state resources, which is prohibited under WAC 292-110-010(6).
- **Example B:** An employee puts a state telephone number or work address on business cards or letterhead for his/her outside business. Several customers contact the employee at the office number to conduct the outside business. This is an ethical violation. Although the use of the telephone may result in a negligible cost to the state, conducting a private business is an illegal use of state resources.
- **Example C:** After working hours, an employee uses the office computer and printer to prepare client billings for a private business using his/her own paper. This is an ethical violation. Although use of the office computer and printer may result in a negligible cost to the state, conducting a private business is an illegal use of state resources.
- **Example D:** One night an employee takes an agency owned video player home to watch videos of his/her family vacation. This is an ethical violation. Although there is little or no cost to the state, an employee may not make private use of state equipment removed from state facilities or other official duty station.



- **Example E:** An employee is assigned to do temporary work in another city away from his/her usual duty station. To perform official duties the employee takes an agency laptop computer. While away, the employee uses the computer to do tax work for a private client. This is an ethical violation. Although use of the laptop may result in a negligible cost to the state, conducting a private business is an inappropriate use of state resources.

**Q: Can I play games on my computer during lunch and break times?**

A: Generally No. When employees download games or load interactive games onto state owned computers, the game play often involves several state employees or can undermine the security of state information and databases. In addition, the computer at your workstation remains a state resource regardless of whether you are working or on a break. Nevertheless, subject to your agency's prior approval a brief and occasional personal use, during lunch or break times, of a game that was preloaded by the manufacturer on your state computer would be allowed under the de minimis rule. (See WAC 292-110-010(3))

**Q: If I use a state resource, can't I just reimburse my agency for the use?**

A: No. Reimbursing for a personal use may result in a personal benefit and may impose significant administrative burdens on the state. For example, the price of a SCAN call is less than you would pay using your local telephone company. Reimbursing also creates the misperception that personal use is okay as long as we pay for it. Personal use should be the exception not the rule. (See WAC 292-110-010(7))

**Q: Does Advisory Opinion 03-03, covering the use of frequent flyer miles, also apply to other types of travel incentive programs?**

A: Yes, this advisory opinion also applies to motel/hotel point rewards, rental car rewards, and any other travel benefits of a similar nature.

**Q: Can a state employee use the electricity from a power outlet at a state owned or leased facility to charge a personal electric vehicle that is used to commute to work?**

A: The Ethics in Public Service Act would not be violated if an employee were to use state resources to plug in a personal vehicle, so long as the agency included and approved such usage in its policy consistent with RCW 43.01.230 and the purposes of RCW 70.94.521.

## **E-Mail and Internet Use**

### **Q: Can I send a personal e-mail message without violating the ethics law?**

A: Yes. The general ethics standard is that any use of a state resource other than for official state business purposes needs to be brief in duration and frequency to ensure there is little or no cost to the state and the use does not interfere with the performance of official duties. Extensive personal use of state provided e-mail is not permitted. (See WAC 292-110-010(4))

### **Q: Are my e-mail or voice messages private?**

A: No, if you use state equipment do not expect a right to privacy for any of your e-mail or voicemail communications. E-mail and voicemail communications may be considered public records and could be subject to disclosure. Aside from disclosure, employees should consider that e-mail communications are subject to alteration and may be forwarded to unintended recipients. Avoid these potential problems by treating e-mail communications as another form of business correspondence. (See WAC 292-110-010(5))

### **Q: Are there any restrictions on e-mail communications?**

A: Yes. E-mail messages cannot be for any of the following uses: conducting an outside business; political or campaign activities; commercial uses like advertising or selling products; solicitation on behalf of other persons unless approved by the agency head; and illegal or inappropriate activities, such as harassment. In addition, broadly distributing or chain-mailing an e-mail that is not related to official business is prohibited because it disrupts other state employees and obligates them to make a personal use of state resources. (See WAC 292-110-010(6))

### **Q: Can I use my agency's computer and/or access the Internet for training or educational purposes, either personal or work related?**

A: Yes, an agency may authorize the use of an agency's computer and/or access to the Internet for training or education that is related to official duties, including career and educational development identified and approved by the agency, pursuant to RCW 41.06.410, and is documented by the agency as such. This training or education may be done on state time as approved by the agency, while other use of computers and/or access to the Internet for personal training or educational purposes is limited to an agency's de minimis use policy. Tuition-reimbursement training or education in itself does not authorize other than de minimis use where it is not related to official job duties.

### **Q: What are the guidelines on Internet use?**

A: Just like the guidelines for e-mail discussed above, any personal use of state provided Internet access must be both brief and infrequent. Extensive personal use of state provided Internet access is not permitted. In addition, your agency must have

adopted a policy that specifically permits personal use of the Internet. (See WAC 292-110-010(4)) The following examples address uses of the Internet:

- **Example A:** Several times a month an employee quickly uses the Internet to check his or her children's school website to confirm if the school will end early that day. The transaction takes about five minutes. This is not an ethical violation. The use is brief and infrequent, there is little or no cost to the state, and the use does not interfere with the performance of official duties.
- **Example B:** An employee routinely uses the Internet to manage her personal investment portfolio and communicate information to her broker. This is an ethical violation. Using state resources to monitor private stock investments or make stock trades are private activities that can result in a private financial benefit or gain. Allowing even an occasional or limited use of state facilities to facilitate a private financial gain undermines public confidence in state government.
- **Example C:** An employee spends thirty to forty minutes looking at various web sites related to a personal interest. This is an ethical violation. The use is not brief and can interfere with the performance of state duties.
- **Example D:** An employee visits several humor and joke sites. While at a site, he/she downloads a joke file and e-mails it to several co-workers. This is an ethical violation. By e-mailing a file to co-workers the employee disrupts other state employees and obligates them to make a personal use of state resources. In addition, downloading files and distributing them to co-workers can introduce a computer virus, which can compromise state databases.

**Q: What do I do if I access the wrong Internet site?**

A: Don't panic! The best thing to do is to back out of the site and remember what it was that got you there and don't go back. Everyone makes this kind of mistake. It is also advisable to contact your supervisor or information systems staff to notify them of your mistake.

## **Use of State or Resources to Support Charities**

**Q: Can I use state resources to support charities?**

A: The limited use of state resources to support charities may be allowed if an agency head or his/her designee approves the activity as one that promotes organizational effectiveness. Approval may be in the form of a specific policy that establishes guidelines for limited use of state resources. (See WAC 292-110-010(3))

**Q: Can you give me examples of limited uses that might be ok?**

A: Yes. Sending an e-mail to notify employees of a blood drive would be a limited and acceptable use of state resources. Another example might be a bake sale to support an

Adopt-A-Family Program. Here, the baking would be performed at home and after working hours. The baked goods are then displayed for purchase during break times and the lunch hour. When gifts are purchased for the family, the purchases are made after working hours.

**Q: Is there anything employees shouldn't do while conducting charity work on state time?**

A: Any use of state resources that results in an expenditure of funds should be avoided. Consider this scenario: a group of employees spend 6 working hours of staff time a week for over a four-week period to plan a charitable fund-raiser, and use the computer, fax, and copier to produce fund-raising materials. This is an expenditure of state funds that would not be considered a de minimis or limited use of state resources. In addition, state resources may not be used for the benefit of any other person, whether or not operated for profit, unless the use is within the course of official duties. The following example addresses another area of concern. (See WAC 292-110-010(3))

- **Example:** An employee is active in a local PTA organization that holds fund-raising events to send children to the nation's capital. Although a parental payment of expenses for the trip is expected, the more raised through individual contributions, the less the parent must pay. The employee uses agency e-mail to solicit contributions to the fund-raiser from a broad distribution list of co-workers. The e-mail asks each recipient to pass along the e-mail to other state employees. This is an ethical violation. The employee is using state resources to promote an outside organization and a private interest. By sending the e-mail to other state employees and asking state employees to pass the solicitation along, the employee is asking other state employees to improperly use state resources in a manner that interferes with the performance of official duties.

**Q: What about the Combined Fund Drive?**

A: The Combined Fund Drive is somewhat different than other independent charitable organizations because it has been established by the state legislature. Therefore, it is part of the official duties of those employees who are assigned by the agency to conduct the Drive. Fund Drive coordinators should confine the time and effort spent conducting the drive to agency guidelines. (See WAC 292-110-010(2) and EEB Advisory Opinion 00-09)

**Q: What about the employees who are not officially assigned to conduct the Combined Fund Drive?**

A: As noted above with charitable groups, the use of state resources to support the Combined Fund Drive charities should be reasonable, involve little or no cost to the agency, and should not disrupt the conduct of official business in state offices. (See WAC 292-110-010(3) and EEB Advisory Opinion 96-11)

**Q: How about agency participation in commercial activity that benefits the Combined Fund Drive?**

A: State agencies should avoid direct involvement in commercial activity even if the proceeds may benefit the Combined Fund Drive. Examples of improper direct involvement include distributing commercial product sales brochures and order forms to agency employees, collecting product order forms in the workplace or on state paid time, and distributing products in the workplace or on state paid time. Activities permitted under the de minimis rule, such as those described in the answer to Question 15, should not involve commercial activities. (See WAC 292-110-010(6))

**Solicitations by State Employees on Behalf of Charitable Organizations**

The solicitation of goods and services from private companies is addressed under several provisions of the Ethics in Public Service Act. In addition to interpreting and applying the use of state resources provisions, this section of the FAQ's are intended to provide examples of how the Board would interpret and apply RCW 42.52.070, 42.52.140, and 42.52.150 to common occurrences in the state workplace.

**Q: Can agency employees solicit donations for charitable events from outside businesses?**

A: The state's ethics law contains a very strong presumption against solicitation by any state officer or state employee for any purpose, including charitable events. Solicitation by state employees can create the appearance that a donation might result in favorable treatment from the state, whereas a failure to donate might result in unfavorable treatment. A state officer or state employee whose official duties include regulation or the contracting for goods and services needs to be especially careful about solicitation. Accordingly, State officers and employees may not use their official state positions to solicit goods and services from private organizations and businesses. The following examples address solicitation on behalf of charitable organizations. (See RCW 42.52.070, RCW 42.52.140 and RCW 42.52.150(4))

- **Example A:** The head of a state agency purchasing office sends a letter requesting gifts or donations for use at a CFD kick off luncheon to several vendors who provide goods and services to the agency. This is an ethical violation. While the purchasing supervisor will not personally benefit from the gifts, the CFD charities and the gift recipients would benefit from them. In addition, it would be reasonably expected that vendors who respond favorably to the solicitation did so with the intent to influence the vote, action, or judgment of the purchasing supervisor. (See RCW 42.52.070 and RCW 42.52.140)
- **Example B:** The head of a state agency sends a letter to local businesses, including several vendors who provide goods and services to the agency, requesting gifts or donations for a use that will benefit agency employees and a

private charity. This is an ethical violation. While the agency head will not personally benefit from the gifts, the private charity would benefit from them. In addition, it would be reasonably expected that vendors who respond favorably to the solicitation did so with the intent to influence the vote, action, or judgment of the agency head. This expectation in the vendors would be true even if the agency head did not routinely participate in such decisions. (See RCW 42.52.070 and RCW 42.52.140)

- **Example C:** On their lunch break a group of agency employees who work for an agency that regulates or administers benefits for private business, but who are not personally involved in regulating or administering benefits for their agency, solicit holiday gifts on behalf of a family sponsored by Adopt-a-Family. When soliciting the gifts they voluntarily inform the businesses that they are employed by their state agency but are soliciting on behalf of the sponsored family or Adopt-a-Family. This is an ethical violation. By stating that they are employed by an agency that regulates or administers benefits for the private businesses they are using their state positions to influence the private businesses and support the private charity. (See RCW 42.52.070)
- **Example D:** On their lunch break or after work a group of agency employees who are involved in regulating or contracting on behalf of their agency solicit holiday gifts on behalf of a family sponsored by Adopt-a-Family. They do not solicit from agency vendors or other individuals with whom they conduct state business. When soliciting the gifts they tell the businesses that they are soliciting on behalf of the sponsored family or Adopt-a-Family. This is not an ethical violation. By soliciting on behalf of the private charity and not a state agency they are not using their state positions to influence the private businesses. In addition, the employees are not using state paid time or resources for the solicitation.
- **Example E:** After work or on the weekend a group of state employees solicit holiday gifts on behalf of a family sponsored by Adopt-a-Family or their local private school. They solicit door to door in their neighborhood and do not solicit from agency vendors or other individuals with whom they conduct state business. When soliciting the gifts they indicate that they are soliciting on behalf of the private school, the sponsored family, or Adopt-a-Family. This is not an ethical violation. The employees are not using their state positions to influence the private businesses and are not using state resources to support the private charities.

**Q: Are there any other considerations we should take into account when conducting charitable solicitations?**

A: Yes, avoid direct personal solicitations of your co-workers and colleagues and opt for voluntary participation. Managers and supervisors should always avoid direct personal solicitations of employees who work under their supervision. In this way, employees avoid creating a situation in which others feel pressured to give or perceive the risk of an unfavorable job action if they fail to give. Please remember that our valuable

dedication to helping others sometimes obscures the fact that those we ask to give may not be able to give or may chose to give to other charities.

**Q: If we can't solicit, then what should we do?**

A: A state employee may purchase a gift certificate or other item for its fair market value and donate the item to an agency-sponsored charitable event.

## **Political or Campaign Buttons, Bumper Stickers, Signs**

**Q: During the last election, several co-workers wore large political buttons promoting a candidate that I opposed. One co-worker hung a political sign in his work space promoting the passage of an initiative that would impact our agency. Another co-worker placed several political yard signs in the window of her van and parked it in the agency lot. Isn't political campaigning in the work place prohibited?**

A: Yes, the Ethics in Public Service Act prohibits a state officer or employee from using state facilities to support or oppose political campaigns. "Facilities" is broadly defined and includes agency office space and working hours. Personal clothing and personal vehicles, however, would not be considered an agency facility. Therefore, the Ethics Act would not absolutely prohibit an agency policy that permits wearing typical political buttons on an individual's clothing or affixing a political bumper sticker to a personal vehicle. Officials or employees who wear political pins or buttons are urged to exercise caution and prudence. Closely related activity in the state workplace, such as wearing political buttons while interacting with the public or displaying political signs in public areas, could result in prohibited campaigning or violate agency policy. In determining if certain activity violates the Ethics Act the Board would determine if the conduct would lead a reasonable person to believe that the state officer or employee was making a political endorsement. The Board may review and approve agency policies adopted to prevent agency employees from violating the Act. See RCW 42.52.180, WAC 292-110-010, WAC 292-110-020, WAC 292-120-035.

# Revised Code of Washington Chapter 42.52



## Washington Administrative Code Chapter 292-100 through 292-130



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## **CHAPTER 42.52 RCW ETHICS IN PUBLIC SERVICE**

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[42.52.905](#) Severability -- 1994 c 154.

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#### **42.52.010 Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of state government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government.

(2) "Head of agency" means the chief executive officer of an agency. In the case of an agency headed by a commission, board, committee, or other body consisting of more than one natural person, agency head means the person or board authorized to appoint agency employees and regulate their conduct.

(3) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing that the action is of help, aid, advice, or assistance to the person and with intent so to assist such person.

(4) "Beneficial interest" has the meaning ascribed to it under the Washington case law. However, an ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

(5) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in consideration of, personal services to any person.

(6) "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

(7) "Contract" or "grant" means an agreement between two or more persons that creates an obligation to do or not to do a particular thing. "Contract" or "grant" includes, but is not limited to, an employment contract, a lease, a license, a

(8) "Ethics boards" means the commission on judicial conduct, the legislative ethics board, and the executive ethics board.

(9) "Family" has the same meaning as "immediate family" in RCW 42.17.020.

(10) "Gift" means anything of economic value for which no consideration is given. "Gift" does not include:

(a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;

(b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(c) Items exchanged among officials and employees or a social event hosted or sponsored by a state officer or state employee for coworkers;

(d) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(e) Items a state officer or state employee is authorized by law to accept;

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(g) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(h) Campaign contributions reported under chapter 42.17 RCW;

(i) Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group; and

(j) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement.

(11) "Honorarium" means money or thing of value offered to a state officer or state employee for a speech, appearance, article, or similar item or activity in connection with the state officer's or state employee's official role.

(12) "Official duty" means those duties within the specific scope of employment of the state officer or state employee as defined by the officer's or employee's agency or by statute or the state Constitution.

(13) "Participate" means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise but does not include preparation, consideration, or enactment of legislation or the performance of legislative duties.

(14) "Person" means any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

(15) "Regulatory agency" means any state board, commission, department, or officer, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect interests of identified persons.

(16) "Responsibility" in connection with a transaction involving the state, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove, or otherwise direct state action in respect of such transaction.

(17) "State action" means any action on the part of an agency, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(18) "State officer" means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state. "State officer" includes judges of the superior court, judges of the court of appeals, justices of the supreme court, members of the legislature together with the secretary of the senate and the chief clerk of the house of representatives, holders of elective offices in the executive branch of state government, chief executive officers of state agencies, members of boards, commissions, or committees with authority over one or more state agencies or institutions, and employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work. For the purposes of this

chapter, "state officer" also includes any person exercising or undertaking to exercise the powers or functions of a state officer.

(19) "State employee" means an individual who is employed by an agency in any branch of state government. For purposes of this chapter, employees of the superior courts are not state officers or state employees.

(20) "University" includes "state universities" and "regional universities" as defined in RCW 28B.10.016 and also includes any research or technology institute affiliated with a university, including without limitation, the Spokane Intercollegiate Research and Technology Institute and the Washington Technology Center.

(21) "University research employee" means a state officer or state employee employed by a university, but only to the extent the state officer or state employee is engaged in research, technology transfer, approved consulting activities related to research and technology transfer, or other incidental activities.

(22) "Thing of economic value," in addition to its ordinary meaning, includes:

(a) A loan, property interest, interest in a contract or other chose in action, and employment or another arrangement involving a right to compensation;

(b) An option, irrespective of the conditions to the exercise of the option; and

(c) A promise or undertaking for the present or future delivery or procurement.

(23)(a) "Transaction involving the state" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:

(i) Is, or will be, the subject of state action; or

(ii) Is one to which the state is or will be a party; or

(iii) Is one in which the state has a direct and substantial proprietary interest.

(b) "Transaction involving the state" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit.

[2005 c 106 § 1; 1998 c 7 § 1; 1996 c 213 § 1; 1994 c 154 § 101.]

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**42.52.020 Activities incompatible with public duties.**

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

[1996 c 213 § 2; 1994 c 154 § 102.]

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**42.52.030 Financial interests in transactions.**

(1) No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

(2) No state officer or state employee may participate in a transaction involving the state in his or her official capacity with a person of which the officer or employee is an officer, agent, employee, or member, or in which the officer or employee owns a beneficial interest, except that an officer or employee of an institution of higher education or the Spokane intercollegiate research and technology institute may serve as an officer, agent, employee, or member, or on the board of directors, board of trustees, advisory board, or committee or review panel for any nonprofit institute, foundation, or fundraising entity; and may serve as a member of an advisory board, committee, or review panel for a governmental or other nonprofit entity.

[2005 c 106 § 2; 1996 c 213 § 3; 1994 c 154 § 103.]

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**42.52.040 Assisting in transactions.**

(1) Except in the course of official duties or incident to official duties, no state officer or state employee may assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the state:

(a) In which the state officer or state employee has at any time participated; or

(b) If the transaction involving the state is or has been under the official responsibility of the state officer or state employee within a period of two years preceding such assistance.

(2) No state officer or state employee may share in compensation received by another for assistance that the officer or employee is prohibited from providing

(3) A business entity of which a state officer or state employee is a partner, managing officer, or employee shall not assist another person in a transaction involving the state if the state officer or state employee is prohibited from doing so by subsection (1) of this section.

(4) This chapter does not prevent a state officer or state employee from assisting, in a transaction involving the state:

(a) The state officer's or state employee's parent, spouse, or child, or a child thereof for whom the officer or employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary, if the state officer or state employee did not participate in the transaction; or

(b) Another state employee involved in disciplinary or other personnel administration proceedings.

[1994 c 154 § 104.]

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**42.52.050 Confidential information — Improperly concealed records.**

(1) No state officer or state employee may accept employment or engage in any business or professional activity that the officer or employee might reasonably expect would require or induce him or her to make an unauthorized disclosure of confidential information acquired by the official or employee by reason of the official's or employee's official position.

(2) No state officer or state employee may make a disclosure of confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another, unless the disclosure has been authorized by statute or by the terms of a contract involving (a) the state officer's or state employee's agency and (b) the person or persons who have authority to waive the confidentiality of the information.

(3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

(4) No state officer or state employee may intentionally conceal a record if the officer or employee knew the record was required to be released under chapter 42.56 RCW, was under a personal obligation to release the record, and failed to do so. This subsection does not apply where the decision to withhold the record was made in good faith.

[2005 c 274 § 292; 1996 c 213 § 4; 1994 c 154 § 105.]



Notes:

Part headings not law -- Effective date -- 2005 c 274: See RCW 42.56.901 and 42.56.902.

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**42.52.060 Testimony of state officers and state employees.**

This chapter does not prevent a state officer or state employee from giving testimony under oath or from making statements required to be made under penalty of perjury or contempt.

[1994 c 154 § 106.]

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**42.52.070 Special privileges.**

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

[1994 c 154 § 107.]

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**42.52.080 Employment after public service.**

(1) No former state officer or state employee may, within a period of one year from the date of termination of state employment, accept employment or receive compensation from an employer if:

(a) The officer or employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration;

(b) Such a contract or contracts have a total value of more than ten thousand dollars; and

(c) The duties of the employment with the employer or the activities for which the compensation would be received include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts. This subsection shall not be construed to prohibit a state officer or state employee from accepting employment with a state employee organization.

(2) No person who has served as a state officer or state employee may, within a

indirect beneficial interest in a contract or grant that was expressly authorized or funded by specific legislative or executive action in which the former state officer or state employee participated.

(3) No former state officer or state employee may accept an offer of employment or receive compensation from an employer if the officer or employee knows or has reason to believe that the offer of employment or compensation was intended, in whole or in part, directly or indirectly, to influence the officer or employee or as compensation or reward for the performance or nonperformance of a duty by the officer or employee during the course of state employment.

(4) No former state officer or state employee may accept an offer of employment or receive compensation from an employer if the circumstances would lead a reasonable person to believe the offer has been made, or compensation given, for the purpose of influencing the performance or nonperformance of duties by the officer or employee during the course of state employment.

(5) No former state officer or state employee may at any time subsequent to his or her state employment assist another person, whether or not for compensation, in any transaction involving the state in which the former state officer or state employee at any time participated during state employment. This subsection shall not be construed to prohibit any employee or officer of a state employee organization from rendering assistance to state officers or state employees in the course of employee organization business.

(6) As used in this section, "employer" means a person as defined in RCW [42.52.010](#) or any other entity or business that the person owns or in which the person has a controlling interest. For purposes of subsection (1) of this section, the term "employer" does not include a successor organization to the rural development council under chapter 43.31 RCW.

[1999 c 299 § 3; 1994 c 154 § 108.]

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#### **42.52.090 Limited assistance by former state officers and employees.**

This chapter shall not be construed to prevent a former state officer or state employee from rendering assistance to others if the assistance is provided without compensation in any form and is limited to one or more of the following:

(1) Providing the names, addresses, and telephone numbers of state agencies or state employees;

(2) Providing free transportation to another for the purpose of conducting business with a state agency;

application forms or other forms required by a state agency for the conduct of a state business; or

(4) Providing assistance to the poor and infirm.

[1994 c 154 § 109.]

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**42.52.100 Conditions on appearance before state agencies or doing business with the state — Hearing — Judicial review.**

(1) The head of an agency, upon finding that any former state officer or state employee of such agency or any other person has violated any provision of this chapter or rules adopted under it, may, in addition to any other powers the head of such agency may have, bar or impose reasonable conditions upon:

(a) The appearance before such agency of such former state officer or state employee or other person; and

(b) The conduct of, or negotiation or competition for, business with such agency by such former state officer or state employee or other person, such period of time as may reasonably be necessary or appropriate to effectuate the purposes of this chapter.

(2) Findings of violations referred to in subsection (1)(b) of this section shall be made on record after notice and hearing, conducted in accordance with the Washington Administrative Procedure Act, chapter 34.05 RCW. Such findings and orders are subject to judicial review.

(3) This section does not apply to the legislative or judicial branches of government.

[1994 c 154 § 110; 1969 ex.s. c 234 § 27. Formerly RCW 42.18.270.]

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**42.52.110 Compensation for official duties or nonperformance.**

No state officer or state employee may, directly or indirectly, ask for or give or receive or agree to receive any compensation, gift, reward, or gratuity from a source for performing or omitting or deferring the performance of any official duty, unless otherwise authorized by law except: (1) The state of Washington; or (2) in the case of officers or employees of institutions of higher education or of the Spokane intercollegiate research and technology institute, a governmental entity, an agency or instrumentality of a governmental entity, or a nonprofit corporation organized for the benefit and support of the state employee's agency or other state agencies pursuant to an agreement with the state employee's agency.

[1996 c 213 § 5; 1994 c 154 § 111.]

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**42.52.120 Compensation for outside activities.**

(1) No state officer or state employee may receive any thing of economic value under any contract or grant outside of his or her official duties. The prohibition in this subsection does not apply where the state officer or state employee has complied with \*RCW [42.52.030](#)(2) or each of the following conditions are met:

(a) The contract or grant is bona fide and actually performed;

(b) The performance or administration of the contract or grant is not within the course of the officer's or employee's official duties, or is not under the officer's or employee's official supervision;

(c) The performance of the contract or grant is not prohibited by RCW [42.52.040](#) or by applicable laws or rules governing outside employment for the officer or employee;

(d) The contract or grant is neither performed for nor compensated by any person from whom such officer or employee would be prohibited by RCW [42.52.150](#)(4) from receiving a gift;

(e) The contract or grant is not one expressly created or authorized by the officer or employee in his or her official capacity;

(f) The contract or grant would not require unauthorized disclosure of confidential information.

(2) In addition to satisfying the requirements of subsection (1) of this section, a state officer or state employee may have a beneficial interest in a grant or contract or a series of substantially identical contracts or grants with a state agency only if:

(a) The contract or grant is awarded or issued as a result of an open and competitive bidding process in which more than one bid or grant application was received; or

(b) The contract or grant is awarded or issued as a result of an open and competitive bidding or selection process in which the officer's or employee's bid or proposal was the only bid or proposal received and the officer or employee has been advised by the appropriate ethics board, before execution of the contract or grant, that the contract or grant would not be in conflict with the proper discharge of the officer's or employee's official duties; or

(c) The process for awarding the contract or issuing the grant is not open and competitive, but the officer or employee has been advised by the appropriate ethics

the officer's or employee's official duties.

(3) A state officer or state employee awarded a contract or issued a grant in compliance with subsection (2) of this section shall file the contract or grant with the appropriate ethics board within thirty days after the date of execution; however, if proprietary formulae, designs, drawings, or research are included in the contract or grant, the proprietary formulae, designs, drawings, or research may be deleted from the contract or grant filed with the appropriate ethics board.

(4) This section does not prevent a state officer or state employee from receiving compensation contributed from the treasury of the United States, another state, county, or municipality if the compensation is received pursuant to arrangements entered into between such state, county, municipality, or the United States and the officer's or employee's agency. This section does not prohibit a state officer or state employee from serving or performing any duties under an employment contract with a governmental entity.

(5) As used in this section, "officer" and "employee" do not include officers and employees who, in accordance with the terms of their employment or appointment, are serving without compensation from the state of Washington or are receiving from the state only reimbursement of expenses incurred or a predetermined allowance for such expenses.

[1997 c 318 § 1; 1996 c 213 § 6; 1994 c 154 § 112.]

Notes:

\*Reviser's note: RCW [42.52.030](#) was amended by 2005 c 106 § 2, deleting subsection (2).

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#### **42.52.130 Honoraria.**

(1) No state officer or state employee may receive honoraria unless specifically authorized by the agency where they serve as state officer or state employee.

(2) An agency may not permit honoraria under the following circumstances:

(a) The person offering the honorarium is seeking or is reasonably expected to seek contractual relations with or a grant from the employer of the state officer or state employee, and the officer or employee is in a position to participate in the terms or the award of the contract or grant;

(b) The person offering the honorarium is regulated by the employer of the state officer or state employee and the officer or employee is in a position to participate in the regulation; or

reasonably likely to seek or oppose enactment of legislation or adoption of administrative rules or actions, or policy changes by the state officer's or state employee's agency; and (ii) the officer or employee may participate in the enactment or adoption.

[1994 c 154 § 113.]

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#### **42.52.140 Gifts.**

No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

[1994 c 154 § 114.]

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#### **42.52.150 Limitations on gifts.**

(1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in RCW [42.52.010](#), whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW [42.52.010](#). The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

(2) Except as provided in subsection (4) of this section, the following items are presumed not to influence under RCW [42.52.140](#), and may be accepted without regard to the limit established by subsection (1) of this section:

- (a) Unsolicited flowers, plants, and floral arrangements;
- (b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;
- (c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(f) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(g) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for deposit in the legislative international trade account created in \*RCW 44.04.270;

(h) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise accepted and solicited for the purpose of promoting the expansion of tourism as provided for in RCW 43.330.090;

(i) Gifts, grants, conveyances, bequests, and devises of real or personal property, or both, solicited on behalf of a national legislative association, 2006 official conference of the national lieutenant governors' association, or host committee for the purpose of hosting an official conference under the circumstances specified in RCW [42.52.820](#) and section 2, chapter 5, Laws of 2006. Anything solicited or accepted may only be received by the national association or host committee and may not be commingled with any funds or accounts that are the property of any person;

(j) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(k) Unsolicited gifts from dignitaries from another state or a foreign country that are intended to be personal in nature.

(3) The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

(4) Notwithstanding subsections (2) and (5) of this section, a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:

(a) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(b) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(c) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(d) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(f) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(g) Those items excluded from the definition of gift in RCW [42.52.010](#) except:

(i) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity;

(ii) Payments for seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution; and

(iii) Flowers, plants, and floral arrangements.

(5) A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties. Gifts in the form of food and beverage that exceed fifty dollars on a single occasion shall be reported as provided in chapter 42.17 RCW.

[2006 c 5 § 3; 2003 1st sp.s. c 23 § 2. Prior: 2003 c 265 § 3; 2003 c 153 § 6; 1998 c 7 § 2; 1994 c 154 § 115.]

Notes:

\*Reviser's note: RCW 44.04.270 was recodified as RCW 43.15.050 pursuant to 2006 c 317 § 5.



Findings -- 2006 c 5: "The legislature finds that due to the massive devastation inflicted on the city of New Orleans by hurricane Katrina on August 29, 2005, the city of New Orleans will not be able to meet its obligation to host the national lieutenant governors' association's annual conference scheduled for July 17 through July 19, 2006. As a result of this unfortunate situation, the members of the national lieutenant governors' association officially pressed to have Washington state host the next annual conference in Seattle, Washington, and lieutenant governor Brad Owen has agreed to do so. The legislature further finds, in recognition of the unprecedented situation created by this natural disaster, the high national visibility of this important event, and due to the limited amount of time remaining for planning and fund-raising, it is necessary to initiate fund-raising activities for this national conference as soon as possible." [2006 c 5 § 1.]

**Official conference of the national lieutenant governors' association -- Solicitation of gifts -- 2006 c 5:** "When soliciting gifts, grants, or donations solely for the purpose of hosting the 2006 official conference of the national lieutenant governors' association to be held in Seattle, Washington, as approved by the lieutenant governor of the state of Washington, the lieutenant governor, and his or her staff designated by the lieutenant governor for this purpose, are presumed not to be in violation of the solicitation, receipt of gift, and conflict of interests with official duties provisions in chapter 42.52 RCW. For the purposes of this section, the national lieutenant governors' association must include among its membership the Washington state lieutenant governor. The solicitation of gifts, grants, or donations for the purpose of hosting the 2006 lieutenant governors' conference is considered an official duty." [2006 c 5 § 2.]

Effective date -- 2006 c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [February 7, 2006]." [2006 c 5 § 4.]

Findings -- 2003 c 153: See note following RCW 43.330.090.

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#### **42.52.160 Use of persons, money, or property for private gain.**

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

(2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties.

(3) The appropriate ethics boards may adopt rules providing exceptions to this section for occasional use of the state officer or state employee, of de minimis cost and value, if the activity does not result in interference with the proper performance of public duties.

[1996 c 213 § 7; 1994 c 154 § 116; 1987 c 426 § 3. Formerly RCW 42.18.217.]

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**42.52.170 Giving, paying, loaning, etc., any thing of economic value to state employee.**

No person shall give, pay, loan, transfer, or deliver, directly or indirectly, to any other person any thing of economic value believing or having reason to believe that there exist circumstances making the receipt thereof a violation of RCW [42.52.040](#), [42.52.110](#), [42.52.120](#), [42.52.140](#), or [42.52.150](#).

[1994 c 154 § 117; 1987 c 426 § 5; 1969 ex.s. c 234 § 23. Formerly RCW 42.18.230.]

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**42.52.180 Use of public resources for political campaigns.**

(1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

(2) This section shall not apply to the following activities:

(a) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition as long as (i) required notice of the meeting includes the title and number of the ballot proposition, and (ii) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(b) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry. For the purposes of this subsection, it is not a violation of this section for an elected official to respond to an inquiry regarding a ballot proposition, to make incidental remarks concerning a ballot proposition in an official communication, or otherwise comment on a ballot proposition without an actual, measurable expenditure of public funds. The ethics boards shall adopt by rule a definition of measurable expenditure;

(c) Activities that are part of the normal and regular conduct of the office or

(d) De minimis use of public facilities by statewide elected officials and legislators incidental to the preparation or delivery of permissible communications, including written and verbal communications initiated by them of their views on ballot propositions that foreseeably may affect a matter that falls within their constitutional or statutory responsibilities.

(3) As to state officers and employees, this section operates to the exclusion of RCW 42.17.130. [1995 c 397 § 30; 1994 c 154 § 118.]

**Notes:**

**Effective date -- Captions -- Severability -- 1995 c 397:** See RCW 42.17.960 through 42.17.962.

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**42.52.190 Investments.**

(1) Except for permissible investments as defined in this section, no state officer or state employee of any agency responsible for the investment of funds, who acts in a decision-making, advisory, or policy-influencing capacity with respect to investments, may have a direct or indirect interest in any property, security, equity, or debt instrument of a person, without prior written approval of the agency.

(2) Agencies responsible for the investment of funds shall adopt policies governing approval of investments and establishing criteria to be considered in the approval process. Criteria shall include the relationship between the proposed investment and investments held or under consideration by the state, the size and timing of the proposed investment, access by the state officer or state employee to nonpublic information relative to the proposed investment, and the availability of the investment in the public market. Agencies responsible for the investment of funds also shall adopt policies consistent with this chapter governing use by their officers and employees of financial information acquired by virtue of their state positions. A violation of such policies adopted to implement this subsection shall constitute a violation of this chapter.

(3) As used in this section, "permissible investments" means any mutual fund, deposit account, certificate of deposit, or money market fund maintained with a bank, broker, or other financial institution, a security publicly traded in an organized market if the interest in the security at acquisition is ten thousand dollars or less, or an interest in real estate, except if the real estate interest is in or with a party in whom the agency holds an investment.

[1994 c 154 § 119.]

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**42.52.200 Agency rules.**

(1) Each agency may adopt rules consistent with law, for use within the agency to protect against violations of this chapter.

(2) Each agency proposing to adopt rules under this section shall forward the rules to the appropriate ethics board before they may take effect. The board may submit comments to the agency regarding the proposed rules.

(3) This section applies to universities only to the extent their activities are not subject to RCW [42.52.220](#).

[2005 c 106 § 3; 1994 c 154 § 120.]

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**42.52.220 Universities — Administrative processes.**

(1) Consistent with the state policy to encourage basic and applied scientific research by the state's research universities as stated in RCW 28B.140.005, each university may develop, adopt, and implement one or more written administrative processes that shall, upon approval by the governor, apply in place of the obligations imposed on universities and university research employees under RCW [42.52.030](#), [42.52.040](#), [42.52.080](#), [42.52.110](#), [42.52.120](#), [42.52.130](#), [42.52.140](#), [42.52.150](#), and [42.52.160](#). The universities shall coordinate on the development of administrative processes to ensure the processes are comparable. A university research employee in compliance with the processes authorized in this section shall be deemed to be in compliance with RCW [42.52.030](#), [42.52.040](#), [42.52.080](#), [42.52.110](#), [42.52.120](#), [42.52.130](#), [42.52.140](#), [42.52.150](#), and [42.52.160](#).

(2) The executive ethics board shall enforce activity subject to the written approval processes under this section, as provided in RCW [42.52.360](#).

[2005 c 106 § 4.]

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**42.52.330 Interpretation.**

By constitutional design, the legislature consists of citizen-legislators who bring to bear on the legislative process their individual experience and expertise. The provisions of this chapter shall be interpreted in light of this constitutional principle.

[1994 c 154 § 203.]

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**42.52.340 Transfer of jurisdiction.**

On January 1, 1995, any complaints or other matters under investigation or consideration by the boards of legislative ethics in the house of representatives and the senate operating pursuant to \*chapter 44.60 RCW shall be transferred to the

limited to minutes of meetings, investigative files, records of proceedings, exhibits, and expense records, shall be transferred to the legislative ethics board created in RCW [42.52.310](#) pursuant to their direction and the legislative ethics board created in RCW [42.52.310](#) shall assume full jurisdiction over all pending complaints, investigations, and proceedings.

[1994 c 154 § 204.]

**Notes:**

**\*Reviser's note:** Chapter 44.60 RCW was repealed by 1994 c 154 § 304, effective January 1, 1995.

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**42.52.350 Executive ethics board.**

(1) The executive ethics board is created, composed of five members, appointed by the governor as follows:

(a) One member shall be a classified service employee as defined in chapter 41.06 RCW;

(b) One member shall be a state officer or state employee in an exempt position;

(c) One member shall be a citizen selected from a list of three names submitted by the attorney general;

(d) One member shall be a citizen selected from a list of three names submitted by the state auditor; and

(e) One member shall be a citizen selected at large by the governor.

(2) Except for initial members and members completing partial terms, members shall serve a single five-year term.

(3) No more than three members may be identified with the same political party.

(4) Terms of initial board members shall be staggered as follows: One member shall be appointed to a one-year term; one member shall be appointed to a two-year term; one member shall be appointed to a three-year term; one member shall be appointed to a four-year term; and one member shall be appointed to a five-year term.

(5) A vacancy on the board shall be filled in the same manner as the original appointment.

(6) Each member shall serve for the term of his or her appointment and until his

(7) The members shall annually select a chair from among themselves.

(8) Staff shall be provided by the office of the attorney general.

[1994 c 154 § 205.]

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**42.52.360 Authority of executive ethics board.**

(1) The executive ethics board shall enforce this chapter and rules adopted under it with respect to statewide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

(2) The executive ethics board shall enforce this chapter with regard to the activities of university research employees as provided in this subsection.

(a) With respect to compliance with RCW [42.52.030](#), [42.52.110](#), [42.52.130](#), [42.52.140](#), and [42.52.150](#), the administrative process shall be consistent with and adhere to no less than the current standards in regulations of the United States public health service and the office of the secretary of the department of health and human services in Title 42 C.F.R. Part 50, Subpart F relating to promotion of objectivity in research.

(b) With respect to compliance with RCW [42.52.040](#), [42.52.080](#), and [42.52.120](#), the administrative process shall include a comprehensive system for the disclosure, review, and approval of outside work activities by university research employees while assuring that such employees are fulfilling their employment obligations to the university.

(c) With respect to compliance with RCW [42.52.160](#), the administrative process shall include a reasonable determination by the university of acceptable private uses having de minimis costs to the university and a method for establishing fair and reasonable reimbursement charges for private uses the costs of which are in excess of de minimis.

(3) The executive ethics board shall:

(a) Develop educational materials and training;

(b) Adopt rules and policies governing the conduct of business by the board, and adopt rules defining working hours for purposes of RCW [42.52.180](#) and where otherwise authorized under chapter 154, Laws of 1994;

(c) Issue advisory opinions;

motion;

(e) Impose sanctions including reprimands and monetary penalties;

(f) Recommend to the appropriate authorities suspension, removal from position, prosecution, or other appropriate remedy; and

(g) Establish criteria regarding the levels of civil penalties appropriate for violations of this chapter and rules adopted under it.

(4) The board may:

(a) Issue subpoenas for the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under examination by the board or involved in any hearing;

(b) Administer oaths and affirmations;

(c) Examine witnesses; and

(d) Receive evidence.

(5) Except as provided in RCW [42.52.220](#), the executive ethics board may review and approve agency policies as provided for in this chapter.

(6) This section does not apply to state officers and state employees of the judicial branch.

[2005 c 106 § 5; 1994 c 154 § 206.]

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#### **42.52.370 Authority of commission on judicial conduct.**

The commission on judicial conduct shall enforce this chapter and rules adopted under it with respect to state officers and employees of the judicial branch and may do so according to procedures prescribed in Article IV, section 31 of the state Constitution. In addition to the sanctions authorized in Article IV, section 31 of the state Constitution, the commission may impose sanctions authorized by this chapter.

[1994 c 154 § 207.]

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#### **42.52.380 Political activities of board members.**

(1) No member of the executive ethics board may (a) hold or campaign for partisan elective office other than the position of precinct committeeperson, or any full-time

defined in chapter 42.17 RCW other than the position of precinct committee person; (c) permit his or her name to be used, or make contributions, in support of or in opposition to any state candidate or state ballot measure; or (d) lobby or control, direct, or assist a lobbyist except that such member may appear before any committee of the legislature on matters pertaining to this chapter.

(2) No citizen member of the legislative ethics board may (a) hold or campaign for partisan elective office other than the position of precinct committee person, or any full-time nonpartisan office; (b) be an officer of any political party or political committee as defined in chapter 42.17 RCW, other than the position of precinct committee person; (c) permit his or her name to be used, or make contributions, in support of or in opposition to any legislative candidate, any legislative caucus campaign committee that supports or opposes legislative candidates, or any political action committee that supports or opposes legislative candidates; or (d) engage in lobbying in the legislative branch under circumstances not exempt, under RCW 42.17.160, from lobbyist registration and reporting.

(3) No citizen member of the legislative ethics board may hold or campaign for a seat in the state house of representatives or the state senate within two years of serving on the board if the citizen member opposes an incumbent who has been the respondent in a complaint before the board.

[1997 c 11 § 1; 1994 c 154 § 208.]

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#### **42.52.390 Hearing and subpoena authority.**

Except as otherwise provided by law, the ethics boards may hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of a person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the ethics board. The ethics board may make rules as to the issuance of subpoenas by individual members, as to service of complaints, decisions, orders, recommendations, and other process or papers of the ethics board.

[1994 c 154 § 209.]

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#### **42.52.400 Enforcement of subpoena authority.**

In case of refusal to obey a subpoena issued to a person, the superior court of a county within the jurisdiction of which the investigation, proceeding, or hearing under this chapter is carried on or within the jurisdiction of which the person refusing to obey is found or resides or transacts business, upon application by the appropriate ethics board shall have jurisdiction to issue to the person an order requiring the person to appear before the ethics board or its member to produce



or in question. Failure to obey such order of the court may be punished by the court as contempt.

[1994 c 154 § 210.]

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**42.52.410 Filing complaint.**

(1) A person may, personally or by his or her attorney, make, sign, and file with the appropriate ethics board a complaint on a form provided by the appropriate ethics board. The complaint shall state the name of the person alleged to have violated this chapter or rules adopted under it and the particulars thereof, and contain such other information as may be required by the appropriate ethics board.

(2) If it has reason to believe that any person has been engaged or is engaging in a violation of this chapter or rules adopted under it, an ethics board may issue a complaint.

[1994 c 154 § 211.]

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**42.52.420 Investigation.**

(1) After the filing of any complaint, except as provided in RCW [42.52.450](#), the staff of the appropriate ethics board shall investigate the complaint. The investigation shall be limited to the allegations contained in the complaint.

(2) The results of the investigation shall be reduced to writing and the staff shall either make a determination that the complaint should be dismissed pursuant to RCW [42.52.425](#), or recommend to the board that there is or that there is not reasonable cause to believe that a violation of this chapter or rules adopted under it has been or is being committed.

(3) The board's determination on reasonable cause shall be provided to the complainant and to the person named in such complaint.

[2000 c 211 § 1; 1994 c 154 § 212.]

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**42.52.425 Dismissal of complaint.**

(1) Based on the investigation conducted under RCW [42.52.420](#) or [42.52.450](#), and subject to rules issued by each board, the board or the staff of the appropriate ethics board may issue an order of dismissal based on any of the following findings:

(a) Any violation that may have occurred is not within the jurisdiction of the board;

(b) The complaint is obviously unfounded or frivolous; or

(c) Any violation that may have occurred does not constitute a material violation because it was inadvertent and minor, or has been cured, and, after consideration of all of the circumstances, further proceedings would not serve the purposes of this chapter.

(2) Written notice of the determination under subsection (1) of this section shall be provided to the complainant, respondent, and the board. The written notice to the complainant shall include a statement of the complainant's right to appeal to the board under subsection (3) of this section if the dismissal order was issued by staff.

(3) In the event that a complaint is dismissed by staff under this section, the complainant may request that the board review the action. Following review, the board shall:

(a) Affirm the staff dismissal;

(b) Direct the staff to conduct further investigation; or

(c) Issue a determination that there is reasonable cause to believe that a violation has been or is being committed.

(4) The board's decision under subsection (3) of this section shall be reduced to writing and provided to the complainant and the respondent.

[2005 c 116 § 1; 2000 c 211 § 2.]

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#### **42.52.430 Public hearing — Findings.**

(1) If the ethics board determines there is reasonable cause under RCW [42.52.420](#) that a violation of this chapter or rules adopted under it occurred, a public hearing on the merits of the complaint shall be held.

(2) The ethics board shall designate the location of the hearing. The case in support of the complaint shall be presented at the hearing by staff of the ethics board.

(3) The respondent shall file a written answer to the complaint and appear at the hearing in person or otherwise, with or without counsel, and submit testimony and be fully heard. The respondent has the right to cross-examine witnesses.

(4) Testimony taken at the hearing shall be under oath and recorded.

(5) If, based upon a preponderance of the evidence, the ethics board finds that the respondent has violated this chapter or rules adopted under it, the board shall file an order stating findings of fact and enforcement action as authorized under this

(6) If, upon all the evidence, the ethics board finds that the respondent has not engaged in an alleged violation of this chapter or rules adopted under it, the ethics board shall state findings of fact and shall similarly issue and file an order dismissing the complaint.

(7) If the board makes a determination that there is not reasonable cause to believe that a violation has been or is being committed or has made a finding under subsection (6) of this section, the attorney general shall represent the officer or employee in any action subsequently commenced based on the alleged facts in the complaint.

[1994 c 154 § 213.]

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#### **42.52.440 Review of order.**

Except as otherwise provided by law, reconsideration or judicial review of an ethics board's order that a violation of this chapter or rules adopted under it has occurred shall be governed by the provisions of chapter 34.05 RCW applicable to review of adjudicative proceedings.

[1994 c 154 § 214.]

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#### **42.52.450 Complaint against legislator or statewide elected official.**

(1) If a complaint alleges a violation of RCW [42.52.180](#) by a legislator or statewide elected official other than the attorney general, the attorney general shall, if requested by the appropriate ethics board, conduct the investigation under RCW [42.52.420](#) and recommend action.

(2) If a complaint alleges a violation of RCW [42.52.180](#) by the attorney general, the state auditor shall conduct the investigation under RCW [42.52.420](#) and recommend action to the appropriate ethics board.

[2005 c 116 § 2; 1994 c 154 § 215.]

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#### **42.52.460 Citizen actions.**

Any person who has notified the appropriate ethics board and the attorney general in writing that there is reason to believe that RCW [42.52.180](#) is being or has been violated may, in the name of the state, bring a citizen action for any of the actions authorized under this chapter. A citizen action may be brought only if the appropriate ethics board or the attorney general have failed to commence an action under this chapter within forty-five days after notice from the person, the person has thereafter notified the appropriate ethics board and the attorney general that the person will commence a citizen's action within ten days upon their failure to

have in fact failed to bring an action within ten days of receipt of the second notice.

If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but the person shall be entitled to be reimbursed by the state of Washington for costs and attorneys' fees incurred. If a citizen's action that the court finds was brought without reasonable cause is dismissed, the court may order the person commencing the action to pay all costs of trial and reasonable attorneys' fees incurred by the defendant.

Upon commencement of a citizen action under this section, at the request of a state officer or state employee who is a defendant, the office of the attorney general shall represent the defendant if the attorney general finds that the defendant's conduct complied with this chapter and was within the scope of employment.

[1994 c 154 § 216.]

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#### **42.52.470 Referral for enforcement.**

As appropriate, an ethics board may refer a complaint:

(1) To an agency for initial investigation and proposed resolution which shall be referred back to the appropriate ethics board for action; or

(2) To the attorney general's office or prosecutor for appropriate action.

[1994 c 154 § 217.]

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#### **42.52.480 Action by boards.**

(1) Except as otherwise provided by law, an ethics board may order payment of the following amounts if it finds a violation of this chapter or rules adopted under it after a hearing under RCW [42.52.370](#) or other applicable law:

(a) Any damages sustained by the state that are caused by the conduct constituting the violation;

(b) From each such person, a civil penalty of up to five thousand dollars per violation or three times the economic value of any thing received or sought in violation of this chapter or rules adopted under it, whichever is greater; and

(c) Costs, including reasonable investigative costs, which shall be included as part of the limit under (b) of this subsection. The costs may not exceed the penalty imposed. The payment owed on the penalty shall be reduced by the amount of the costs paid.

(2) Damages under this section may be enforced in the same manner as a judgment in a civil case.

[1994 c 154 § 218.]

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**42.52.490 Action by attorney general.**

(1) Upon a written determination by the attorney general that the action of an ethics board was clearly erroneous or if requested by an ethics board, the attorney general may bring a civil action in the superior court of the county in which the violation is alleged to have occurred against a state officer, state employee, former state officer, former state employee, or other person who has violated or knowingly assisted another person in violating any of the provisions of this chapter or the rules adopted under it. In such action the attorney general may recover the following amounts on behalf of the state of Washington:

(a) Any damages sustained by the state that are caused by the conduct constituting the violation;

(b) From each such person, a civil penalty of up to five thousand dollars per violation or three times the economic value of any thing received or sought in violation of this chapter or the rules adopted under it, whichever is greater; and

(c) Costs, including reasonable investigative costs, which shall be included as part of the limit under (b) of this subsection. The costs may not exceed the penalty imposed. The payment owed on the penalty shall be reduced by the amount of the costs paid.

(2) In any civil action brought by the attorney general upon the basis that the attorney general has determined that the board's action was clearly erroneous, the court shall not proceed with the action unless the attorney general has first shown, and the court has found, that the action of the board was clearly erroneous.

[1994 c 154 § 219.]

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**42.52.500 Optional hearings by administrative law judge.**

If an ethics board finds that there is reasonable cause to believe that a violation has occurred, the board shall consider the possibility of the alleged violator having to pay a total amount of penalty and costs of more than five hundred dollars. Based on such consideration, the board may give the person who is the subject of the complaint the option to have an administrative law judge conduct the hearing and rule on procedural and evidentiary matters. The board may also, on its own initiative, provide for retaining an administrative law judge. An ethics board may not

case where an administrative law judge is not used and the board did not give such option to the person who is the subject of the complaint.

[1994 c 154 § 220.]

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**42.52.510 Rescission of state action.**

(1) The attorney general may, on request of the governor or the appropriate agency, and in addition to other available rights of rescission, bring an action in the superior court of Thurston county to cancel or rescind state action taken by a state officer or state employee, without liability to the state of Washington, contractual or otherwise, if the governor or ethics board has reason to believe that: (a) A violation of this chapter or rules adopted under it has substantially influenced the state action, and (b) the interest of the state requires the cancellation or rescission. The governor may suspend state action pending the determination of the merits of the controversy under this section. The court may permit persons affected by the governor's actions to post an adequate bond pending such resolution to ensure compliance by the defendant with the final judgment, decree, or other order of the court.

(2) This section does not limit other available remedies.

[1994 c 154 § 221.]

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**42.52.520 Disciplinary action.**

(1) A violation of this chapter or rules adopted under it is grounds for disciplinary action.

(2) The procedures for any such action shall correspond to those applicable for disciplinary action for employee misconduct generally; for those state officers and state employees not specifically exempted in chapter 41.06 RCW, the rules set forth in chapter 41.06 RCW shall apply. Any action against the state officer or state employee shall be subject to judicial review to the extent provided by law for disciplinary action for misconduct of state officers and state employees of the same category and grade.

[1994 c 154 § 222; 1969 ex.s. c 234 § 26. Formerly RCW 42.18.260.]

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**42.52.530 Additional investigative authority.**

In addition to other authority under this chapter, the attorney general may investigate persons not under the jurisdiction of an ethics board whom the attorney general has reason to believe were involved in transactions in violation of this chapter or rules adopted under it.

[1994 c 154 § 223.]

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**42.52.540 Limitations period.**

Any action taken under this chapter must be commenced within five years from the date of the violation. However, if it is shown that the violation was not discovered because of concealment by the person charged, then the action must be commenced within two years from the date the violation was discovered or reasonably should have been discovered: (1) By any person with direct or indirect supervisory responsibilities over the person who allegedly committed the violation; or (2) if no person has direct or indirect supervisory authority over the person who committed the violation, by the appropriate ethics board.

[1994 c 154 § 224.]

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**42.52.550 Compensation of ethics boards.**

The citizen members of the legislative ethics board and the members of the executive ethics board shall be compensated as provided in RCW 43.03.250 and reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislator members of the legislative ethics board shall be reimbursed as provided in RCW 44.04.120.

[1994 c 154 § 227.]

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**42.52.560 Communications from an employee organization or charitable organization — Distribution by state employee.**

(1) Nothing in this chapter prohibits a state employee from distributing communications from an employee organization or charitable organization to other state employees if the communications do not support or oppose a ballot proposition or candidate for federal, state, or local public office. Nothing in this section shall be construed to authorize any lobbying activity with public funds beyond the activity permitted by RCW 42.17.190.

(2) "Employee organization," for purposes of this section, means any organization, union, or association in which employees participate and that exists for the purpose of collective bargaining with employers or for the purpose of opposing collective bargaining or certification of a union.

[2006 c 217 § 1.]

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**42.52.800 Exemptions — Solicitation for state capitol historic furnishings and preservation and restoration of state legislative building.**

(1) When soliciting charitable gifts, grants, or donations solely for the limited purposes of RCW 27.48.040, members of the capitol furnishings preservation

(2) When soliciting charitable gifts, grants, or donations solely for the limited purposes of RCW 27.48.050 or when assisting a nonprofit foundation established for the purposes of RCW 27.48.050, state officers and state employees are exempt from the laws of this chapter.

[2002 c 167 § 3; 1999 c 343 § 4.]

Notes:

Findings -- Effective date -- 2002 c 167: See notes following RCW 27.48.050.

Findings -- Purpose -- 1999 c 343: See note following RCW 27.48.040.

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#### **42.52.801 Exemption — Solicitation to promote tourism.**

When soliciting charitable gifts, grants, or donations solely for the purposes of promoting the expansion of tourism as provided for in RCW 43.330.090, state officers and state employees are presumed not to be in violation of the solicitation and receipt of gift provisions in RCW [42.52.140](#).

[2003 c 153 § 5.]

Notes:

Findings -- 2003 c 153: See note following RCW 43.330.090.

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#### **42.52.802 Exemption — Solicitation for oral history, state library, and archives account.**

This chapter does not prohibit the secretary of state or a designee from soliciting and accepting contributions to the oral history, state library, and archives account created in RCW 43.07.380.

[2003 c 164 § 4.]

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#### **42.52.810 Solicitation for the legislative international trade account — Report.**

(1) When soliciting charitable gifts, grants, or donations solely for the legislative international trade account created in \*RCW 44.04.270, the president of the senate is presumed not to be in violation of the solicitation and receipt of gift provisions in RCW [42.52.140](#).

(2) When soliciting charitable gifts, grants, or donations solely for the legislative international trade account created in \*RCW 44.04.270, state officers and state employees are presumed not to be in violation of the solicitation and receipt of gift provisions in RCW [42.52.140](#).



including a list of receipts and expenditures, shall be published by the president of the senate and submitted to the house of representatives and the senate and be a public record for the purposes of RCW 42.56.070.

[2005 c 274 § 293; 2003 c 265 § 2.]

Notes:

\*Reviser's note: RCW 44.04.270 was recodified as RCW 43.15.050 pursuant to 2006 c 317 § 5.

Part headings not law -- Effective date -- 2005 c 274: See RCW 42.56.901 and 42.56.902.

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#### **42.52.820 Solicitation for hosting national legislative association conference.**

When soliciting gifts, grants, or donations to host an official conference within the state of Washington of a national legislative association as approved by both the chief clerk and the secretary of the senate, designated legislative officials and designated legislative employees are presumed not to be in violation of the solicitation and receipt of gift provisions in this chapter. For the purposes of this section, any legislative association must include among its membership the Washington state legislature or individual legislators or legislative staff.

[2003 1st sp.s. c 23 § 1.]

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#### **42.52.900 Legislative declaration.**

Government derives its powers from the people. Ethics in government are the foundation on which the structure of government rests. State officials and employees of government hold a public trust that obligates them, in a special way, to honesty and integrity in fulfilling the responsibilities to which they are elected and appointed. Paramount in that trust is the principle that public office, whether elected or appointed, may not be used for personal gain or private advantage.

The citizens of the state expect all state officials and employees to perform their public responsibilities in accordance with the highest ethical and moral standards and to conduct the business of the state only in a manner that advances the public's interest. State officials and employees are subject to the sanctions of law and scrutiny of the media; ultimately, however, they are accountable to the people and must consider this public accountability as a particular obligation of the public service. Only when affairs of government are conducted, at all levels, with openness as provided by law and an unswerving commitment to the public good does government work as it should.

The obligations of government rest equally on the state's citizenry. The

can have in the judgments and decisions of their elected representatives. Citizens, therefore, should honor and respect the principles and the spirit of representative democracy, recognizing that both elected and appointed officials, together with state employees, seek to carry out their public duties with professional skill and dedication to the public interest. Such service merits public recognition and support.

All who have the privilege of working for the people of Washington state can have but one aim: To give the highest public service to its citizens.

[1994 c 154 § 1.]

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**42.52.901 Liberal construction.**

This chapter shall be construed liberally to effectuate its purposes and policy and to supplement existing laws as may relate to the same subject.

[1994 c 154 § 301.]

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**42.52.902 Parts and captions not law — 1994 c 154.**

Parts and captions used in this act do not constitute any part of the law.

[1994 c 154 § 302.]

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**42.52.903 Serving on board, committee, or commission not prevented.**

Nothing in this chapter shall be interpreted to prevent a member of a board, committee, advisory commission, or other body required or permitted by statute to be appointed from any identifiable group or interest, from serving on such body in accordance with the intent of the legislature in establishing such body.

[1969 ex.s. c 234 § 33. Formerly RCW 42.18.330.]

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**42.52.904 Effective date — 1994 c 154.**

Sections 101 through 121, 203, 204, 207 through 224, and 301 through 317 of this act shall take effect January 1, 1995.

[1994 c 154 § 319.]

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**42.52.905 Severability — 1994 c 154.**

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1994 c 154 § 320.]

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## **CHAPTER 292-100 WAC PROCEDURAL RULES**

- [292-100-005](#) Purpose.
- [292-100-006](#) Adoption of model rules of procedure.
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#### **DISPOSITIONS OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER**

292-100-070 Investigation materials not disclosable during investigation. [Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-070, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-070, filed 10/30/96, effective 11/30/96.] Repealed by 01-13-033, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425.

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**292-100-005 Purpose.** The purpose of this chapter is to promulgate executive ethics board rules concerning complaints, investigations, and hearings pursuant to RCW 42.52.410, 42.52.420, 42.52.430, 42.52.470 and 42.52.500.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-005, filed 3/2/99, effective 4/2/99.]

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**292-100-006 Adoption of model rules of procedure.** The model rules of procedure, chapter 10-08 WAC, adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended, are hereby adopted for use by the board. In the case of a conflict between the model rules of procedure and procedural rules adopted in this chapter, the procedural rules adopted by the board shall take precedence.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-006, filed 3/2/99, effective 4/2/99.]

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**292-100-007 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board staff" shall include the executive director, the investigator, attorneys who bring cases before the board, and the training and information specialist.

(2) "Complainant" means a person who has filed a complaint with the board.

(3) "Employing agency" means the former or current state agency of the respondent during the time the alleged violation occurred.

(4) "Lobbying," for the purposes of RCW 42.52.380, does not include written communication by the board to members of the state legislature or to any other

government official on matters pertaining directly to the Ethics in Public Service Act.

(5) "Party" includes the board staff and the respondent. The respondent may be represented in any matter filed under chapter 42.52 RCW by an attorney or an exclusive bargaining representative. If the respondent is represented by a person who is not an attorney, the representation shall conform to the standards of ethical conduct required of attorneys before the courts of the state of Washington.

(6) "Preliminary investigation" refers to the confidential fact-finding investigation that occurs before the board's determination of reasonable cause.

(7) "Presiding officer" refers to the board chair, vice chair, a board member designated as presiding officer by the chair or vice chair, or an administrative law judge.

(8) "Respondent" means a current or former state officer or state employee alleged to have violated chapter 42.52 RCW by a complainant.

[Statutory Authority: RCW 42.52.360 (2)(b). 05-19-142, § 292-100-007, filed 9/21/05, effective 10/22/05. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-007, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-007, filed 3/2/99, effective 4/2/99.]

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**292-100-010 Initiation of complaint.** (1) A complaint alleging a violation of chapter 42.52 RCW may be filed by:

(a) Any person; or

(b) The board.

(2) If a member of the board or the board's staff files a complaint in his or her individual capacity, the board member or staff member shall be disqualified from acting in his or her official capacity with regard to the disposition of that complaint.

(3) Other agencies may refer information about possible violations of chapter 42.52 RCW to the board for consideration. The board may file a complaint if appropriate.

(4) Complaints initiated by the board will be signed on behalf of the board by the executive director.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-010, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-010, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter

42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-010, filed 10/30/96, effective 11/30/96.]

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**292-100-020 Complaint procedures — Status of complainant and others.**

(1) When a complaint has been filed with the board, neither the complainant, if other than board, nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the board. The complainant is not a party to an ethics case for any purpose; however, the board staff will give notice to the complainant and the employing agency of any open board hearings on the matter.

(2) This section does affect the right to request a review of a board staff decision to dismiss complaint, pursuant to RCW 42.52.425 and WAC [292-100-045](#).

(3) The person or persons alleged in a complaint to have violated chapter 42.52 RCW, are respondents as to that complaint.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-020, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-020, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-020, filed 10/30/96, effective 11/30/96.]

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**292-100-030 Procedures for filing complaints.** (1) A complaint filed with the board shall be in writing on a form provided by the board, or in an appropriate written form that includes the information in subsection (2) of this section, and signed by the complainant or by the complainant's counsel.

(2) A complaint shall include:

(a) The complainant's name; except that the board may choose to issue a complaint based upon information provided by a person who refuses to be identified;

(b) A statement of the nature of the alleged violation(s) and the name of person(s) responsible and the complaint should also include the date, time, and place of each alleged violation; and

(c) All available documentation and other evidence including any witnesses to the violation which the complainant is able to supply to demonstrate a reason for believing that a violation of chapter 42.52 RCW, or the rules adopted under it has occurred.

(3) A complaint which is incomplete, or does not contain enough information to allege a violation of chapter 42.52 RCW, will not be accepted for filing.

(4) The board will not consider allegations in a properly filed complaint that fall outside the jurisdiction of the board. The board or its staff may refer such allegations to an appropriate agency with jurisdiction.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-030, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-030, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-030, filed 10/30/96, effective 11/30/96.]

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**292-100-040 Acceptance and preliminary review of complaints.** (1) Upon receiving a complaint, the board staff shall review the complaint for completeness. If a complaint is complete, it will be accepted for filing. If a complaint is incomplete, the complaint shall be returned to the complainant with a statement of the reasons the complaint has not been accepted.

(2) Once a complaint has been accepted, board staff will review the complaint, determine the extent of investigation required and determine whether the complaint may be dismissed pursuant to RCW 42.52.425 and WAC [292-100-045](#).

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-040, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-040, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-040, filed 10/30/96, effective 11/30/96.]

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**292-100-041 Investigation of complaints.** (1) If board staff determines that a complaint should not be dismissed pursuant to RCW 42.52.425 and WAC [292-100-045](#), the board staff shall conduct a preliminary investigation.

(2) During the course of the preliminary investigation, the board staff will give the respondent(s) a copy of the complaint or a summary thereof, and an opportunity to present such information as the respondent may desire, provided that if a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint.

(3) It is the intent of the board that board staff who are investigating a complaint will work with the respondent's employing agency, unless in the judgment of the investigator it will impede the investigation. During the course of the investigation, the board staff shall provide the employing agency with a copy of the complaint or a summary thereof. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint.



(4) The board staff shall reduce the results of a preliminary review or investigation to writing.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-041, filed 6/13/01, effective 7/14/01.]

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**292-100-042 Board staff referral of allegations.** (1) The board staff may refer a complaint or a summary thereof to the employing agency for investigation and recommendation of resolution. The referral will include a copy of the complaint and all supporting documentation and shall include a date for submission of the report and recommendation allowing at least thirty days. If a complainant has requested confidentiality under chapter 42.17 RCW, the complainant's name and identifying information shall be deleted from the complaint. The agency receiving the referral may request additional time, if needed. During the course of the agency's investigation, the agency shall contact the respondent and provide the respondent with a copy of the complaint. The agency will provide the respondent with an opportunity to present such information as the respondent may desire.

(2) If board staff determine that a complaint alleges conduct which may violate a criminal statute, the staff may refer the complaint to the appropriate law enforcement authority and if referred, will suspend their investigation until the law enforcement authority responds as to whether criminal charges will be filed. If the law enforcement authority elects to file criminal charges, no further action will be taken while the criminal case is pending. If the law enforcement authority elects not to file criminal charges, board staff shall complete their investigation and follow the procedures set forth in these rules.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-042, filed 6/13/01, effective 7/14/01.]

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**292-100-045 Executive director's dismissal of complaints.** (1) If after a preliminary review or investigation the board staff determines that:

(a) Any alleged violation that may have occurred is not within the jurisdiction of the board;

(b) The complaint is obviously unfounded or frivolous; or

(c) The complaint presents a violation of chapter 42.52 RCW, but any violation that may have occurred does not constitute a material violation because it was inadvertent and minor, or has been cured, and, after consideration of all of the circumstances, further proceedings would not serve the purposes of this chapter, the executive director may dismiss the complaint by issuing an order of dismissal.

(2) The preliminary review or investigation report and a written notice of the



executive director's order of dismissal shall be provided to the complainant, respondent, and the board. (See RCW 42.52.425.)

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-045, filed 6/13/01, effective 7/14/01.]

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**292-100-046 Complainant's request for review of executive director's dismissal order.** (1) Upon the written request of the complainant, the executive director's order of dismissal will be reviewed by the board.

(2) A request for review must be received at the board's administrative office no later than twenty days after the date the order of dismissal is mailed to the complainant.

(3) A request for review shall state the grounds therefor.

(4) When a request for review is received, the board staff shall prepare a record for the board's review and serve notice upon the respondent that a review has been requested. The record will consist of:

- (a) The complaint;
- (b) The preliminary review or investigation report, as applicable;
- (c) The order of dismissal;
- (d) The complainant's request for review;
- (e) The executive director's response to the request for review; and
- (f) Any additional material requested by the chair.

(5) The board shall review the record and deliberate in closed session, without oral argument, and act on the request at the next meeting at which it may be practicable by:

- (a) Affirming the dismissal;
- (b) Directing board staff to conduct further investigation; or
- (c) Issuing a determination that there is reasonable cause to believe that a violation has been or is being committed.

(6) In reviewing the executive director's order of dismissal, the board shall base its review on whether the executive director had a rational basis for the decision.

The board only shall reverse a decision to the extent that a rational basis is lacking.

(7) The board's decision shall be reduced to writing and provided to the complainant and the respondent.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-046, filed 6/13/01, effective 7/14/01.]

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**292-100-047 Board member's request for review of executive director's dismissal order.** (1) Upon the written request of a board member, the executive director's order of dismissal will be reviewed by the board.

(2) The preliminary review or investigation report and a written notice of the executive director's order of dismissal shall be provided to the board at the next regular meeting.

(3) A request for review by a board member must be received by the executive director no later than twenty days after the date the order of dismissal is provided to the board.

(4) When a request for review is received, the board staff shall prepare a record for the board's review and serve notice upon the respondent that a review has been requested. The record will consist of:

(a) The complaint;

(b) The preliminary review or investigation report, as applicable;

(c) The order of dismissal;

(d) Any additional material requested by the chair or the board member who requested the review.

(5) The board shall review the record, consider the request in executive session, and act on the request at the next meeting at which it may be practicable by:

(a) Affirming the dismissal;

(b) Directing board staff to conduct further investigation; or

(c) Issuing a determination that there is reasonable cause to believe that a violation has been or is being committed.

(6) The board's decision shall be reduced to writing and provided to the complainant and the respondent.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-047, filed 6/13/01, effective 7/14/01.]

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**292-100-050 Determination on reasonable cause.** (1) Following the preliminary investigation, the board staff shall prepare a written investigation report and make a recommendation to the board on whether to find reasonable cause, including a recommendation as to whether the penalty may be greater than \$500.

(2) Upon receipt of the board staff's investigation report and recommendation, the board shall determine whether or not there is reasonable cause to believe that a violation of chapter 42.52 RCW has occurred.

(3) The board's reasonable cause determination shall be done in closed session.

(4) If the board finds reasonable cause, the board shall consider whether the penalty and costs for the alleged violation may be greater than \$500. If the board may wish to impose penalty and costs greater than \$500, the respondent shall be given the option to have an administrative law judge conduct the hearing and rule on procedural and evidentiary matters. If the respondent is not given that option, the board may not impose penalty and costs greater than \$500. The board may, on its own initiative, choose to retain an administrative law judge to conduct any hearing.

(5) Upon receipt of an investigation report and recommendation on a complaint referred to the employing agency for investigation, the board shall either:

(a) Reject the report and recommendation and initiate its own investigation; or

(b) Concur with the report and recommendation and either initiate a hearing if the recommended penalty is a monetary fine or refer the matter to the employing agency for implementation of the recommendation if the recommendation is within the agency's authority to implement. The agency shall report implementation to the board and the board shall dismiss the complaint; or

(c) Concur with the report and recommendation, enter a finding of no reasonable cause and dismiss the complaint; or

(d) Concur with the report and recommendation, consider the report an investigative report, enter a finding of reasonable cause, and proceed under this section.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-050, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-050, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-050, filed 10/30/96, effective 11/30/96.]

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**292-100-060 Notice of hearing — Filing of answer.** (1) Following the board's determination on reasonable cause, the board shall provide the complainant, the respondent and the employing agency with a copy of the written determination on reasonable cause and a copy of the board staff's written investigation report. If reasonable cause is found, the determination of reasonable cause shall include a statement of the alleged violations. Prior to scheduling a public hearing, the board shall provide the respondent with an explanation of the option to request that the hearing be conducted by an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500.

(2) Within 30 days of service of the written determination on reasonable cause, the respondent shall file an answer to the written determination on reasonable cause which shall state his/her response to the alleged violations. The answer shall include either a request for or a waiver of the right to request an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500.

(3) Failure to file an answer to the written determination on reasonable cause within 30 days of service constitutes a default, and the board may proceed to resolve the case without further notice to, or hearing for the benefit of, the respondent.

(4) Within 10 days after service of a default order under subsection (3) of this section, the respondent may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the board chair or a designated board member may adjourn further proceedings or conduct them without the participation of the respondent.

(5) Within 30 days of service of the written determination on reasonable cause, the respondent shall have the right to request an administrative law judge if the penalty and costs for the alleged violation may be greater than \$500. If the respondent fails to request an administrative law judge within 30 days, the right to have the matter presided over by an administrative law judge is waived. If the respondent does not request an administrative law judge within 30 days and has not defaulted pursuant to this section, the board staff may, at its option, commence an adjudicative proceeding to resolve the matter.

(6) The respondent shall be notified of the date of the hearing no later than 20 days before the hearing date.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-060, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-060, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-060, filed 10/30/96, effective 11/30/96.]

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**292-100-080 Investigation procedures — Subpoenas.** (1) During the course of an investigation, the board, a board member, or the executive director, may issue a subpoena directed to any person who is likely to possess information which is relevant and material to the investigation. The subpoena shall:

- (a) Specifically describe the information which is sought, and
  - (b) Require the production of information at a reasonable place and time, but no later than ten days from the date it is served, and
  - (c) Notify the person that if the information is not produced, the board will apply to the superior court for an appropriate order or other remedy. The subpoena may be personally delivered or sent by certified mail, return receipt requested.
- (2) The board may issue a subpoena under RCW 42.52.390 to compel persons to appear and give testimony and may require the production of any books, papers, correspondence, memorandums or other documents which the board deems relevant and material.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-080, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-080, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-080, filed 10/30/96, effective 11/30/96.]

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**292-100-090 Informal settlement — Cases resolvable by stipulation.** (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

- (a) Any respondent may request settlement by notifying board staff in writing.
- (b) If settlement may be accomplished by negotiation, negotiations shall be commenced at the earliest possible time. When board staff and the respondent agree that some or all of the facts are uncontested and a stipulation of the facts is reached, board staff is responsible for providing a written description of the recommended resolution or stipulation to the person(s) involved.
- (c) If settlement of a hearing may be accomplished by informal negotiation, negotiations may be concluded by:
  - (i) Stipulation of facts by the parties; or

(ii) Stipulation of facts, conclusions and penalty by the parties.

(iii) A stipulated order agreed to by the parties.

(d) Board staff shall only present proposed stipulations and settlements to the board which it recommends the board adopt.

(2) Any proposed stipulation shall be in writing and signed by each party to the stipulation and his or her attorney, if represented. The stipulation may be recited on the record at the hearing. The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing. If the board requests additional facts be presented, the matter shall be referred to the board staff for further investigation.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-090, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-090, filed 10/30/96, effective 11/30/96.]

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**292-100-100 Prehearing conference — Rule.** (1) In any proceeding, the presiding officer upon his/her own motion or upon request by board staff or the respondent or their counsel, may direct the board staff or respondent to appear at a specified time and place for a conference to consider:

(a) Simplification of issues;

(b) The necessity of amendments to the hearing notice;

(c) The possibility of obtaining stipulations, admissions of facts and of documents;

(d) Limitation on the number of witnesses;

(e) Authorizing discovery by any party;

(f) Scheduling order; and

(g) Procedural and such other matters as may aid in the disposition of the proceeding.

(2) Prehearing conferences may be held by telephone conference call or at a time and place specified by the presiding officer.

(3) Following the prehearing conference, the presiding officer shall issue an order reciting the action taken and decisions made at the conference. If no objection to the order is filed with the presiding officer within seven days after the date the order is mailed, the order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-100, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-100, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-100, filed 10/30/96, effective 11/30/96.]

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**292-100-105 Discovery — Authority of presiding officer.** After a finding of reasonable cause, no discovery is permitted by a party pursuant to WAC [292-100-110](#) through [292-100-150](#) unless authorized by the presiding officer. In deciding whether to authorize discovery and the extent of discovery to be allowed, the presiding officer shall consider the party's need for discovery while ensuring that discovery does not unduly delay the hearing. If the determination of reasonable cause includes an allegation that the respondent has violated RCW 42.52.180, the presiding officer shall permit discovery by the parties. Prior to the appointment of a presiding officer, the chair or other member designated by the board may authorize discovery if the party can demonstrate a compelling reason why discovery must be conducted prior to the appointment of a presiding officer.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-105, filed 3/2/99, effective 4/2/99.]

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**292-100-110 Hearings — Discovery — Subpoenas.** (1) The board, a board member, or the executive director may issue subpoenas for discovery, subpoenas to persons to appear and give testimony, and may require the production of any books, papers, correspondence, memoranda, or other records deemed relevant or material and the board or presiding officer may issue protective orders as appropriate. Any party may issue subpoenas. All subpoenas for hearings must be filed with the presiding officer, together with proof of proper service, at least five days prior to the date of the hearing for which they are issued. All subpoenas will be issued and may be enforced in the form and manner set forth in RCW 34.05.446 and WAC 10-08-120.

(2) The presiding officer, upon motion and before the time specified in the subpoena for compliance therewith, may:



(a) Quash or modify the subpoena if it is unreasonable and oppressive; or

(b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(3) The attendance of witnesses and such production of evidence may be required from any place within the state of Washington to any location where a hearing is being conducted.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-110, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-110, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-110, filed 10/30/96, effective 11/30/96.]

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**292-100-120 Hearings — Discovery — Methods authorized.** The following discovery methods are authorized: Deposition upon oral examination, written interrogatories, requests for production, and requests for admission. Deposition upon oral examination, written interrogatories, and requests for admission may be used as evidence in the hearing. The attendance of witnesses to a deposition may be compelled by use of a subpoena. Depositions shall be taken only in accordance with this rule and the rules on subpoenas, except that board staff and the respondent may stipulate to other arrangements.

[Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-120, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-120, filed 10/30/96, effective 11/30/96.]

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**292-100-130 Hearings — Discovery — Depositions and interrogatories — Notice.** A party desiring to take the deposition of any person upon oral examination shall give reasonable notice of not less than five days in writing to the presiding officer and all parties. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined. On motion of a party to whom the notice is served, the presiding officer may for cause shown, enlarge or shorten the time. If the parties so stipulate in writing, depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used as other depositions.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-130, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-130, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-130, filed 10/30/96, effective 11/30/96.]

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**292-100-140 Depositions and interrogatories in hearings — Protection of parties and deponents.** After notice is served for taking a deposition, upon its own motion or upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the presiding officer may order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or the presiding officer may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression.

At any time during the taking of the deposition, on motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer may order the party conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition as above provided. If the order made terminates the examination, it shall be resumed only upon the order of the presiding officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-140, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-140, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-140, filed 10/30/96, effective 11/30/96.]

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**292-100-150 Discovery — Production of documents and use at hearing.** (1) Upon request by either party, copies of all materials to be presented at the hearing shall be provided to the requester within seven days of the request but, for good cause shown, not less than three business days prior to the date of the hearing.

(2) When documents are to be offered into evidence at the hearing, the one offering the exhibit shall provide a minimum of ten copies.

(3) If documentary evidence has not been exchanged prior to the hearing, the parties shall arrive at the hearing location or make documents available in sufficient time before the time scheduled for the hearing for the purpose of exchanging and making copies of exhibits to be introduced.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-150, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-150, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-150, filed 10/30/96,

effective 11/30/96.]

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**292-100-160 Conduct of hearings.** (1) A hearing shall be conducted pursuant to the Administrative Procedure Act (chapter 34.05 RCW) and its supporting regulations (chapter 10-08 WAC), shall be followed unless modified by chapter 292-100 WAC.

(2) A hearing shall be conducted either by the board or by an administrative law judge. If an administrative law judge participates, either by request of a respondent or by request of the board, the board may choose to sit with the administrative law judge to hear the matter and to enter a final order at the conclusions of the proceedings; or to have the administrative law judge hear the matter alone and prepare an initial order for review by the board. If an administrative law judge sits with the board, he or she shall rule on procedural and evidentiary matters.

(3) After the hearing the board may conclude that:

(a) The respondent(s) did not violate the act, as alleged, and dismiss the case;  
or

(b) The respondent(s) has (have) violated chapter 42.52 RCW; or

(c) The respondent(s) is (are) in violation of chapter 42.52 RCW, the board's remedy would be inadequate and the matter should be referred to the appropriate law enforcement agency as provided in RCW 42.52.470.

(4) Following a hearing in which the board participates, the board:

(a) Shall set forth in writing its findings of fact, conclusions of law and decision on the merits of the case; and

(b) Shall serve each party, the complainant and the employing agency, a copy of the findings of fact, conclusions of law and decision.

(5) Following a hearing in which the board does not participate, the administrative law judge shall:

(a) Set forth written findings of fact, conclusions of law and decision on the merits of the case in an initial order;

(b) Shall serve each party and board staff a copy of the findings of fact, conclusions of law and decision, including a statement of the right to request review of the initial order by the board.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-

160, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-160, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-160, filed 10/30/96, effective 11/30/96.]

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**292-100-170 Review of initial orders by an administrative law judge.** (1) An initial order by an administrative law judge shall become the final order of the board within forty-five days of the initial order unless:

(a) A board member determines that the initial order should be reviewed as provided in WAC [292-100-175](#);

(b) A party files a petition for review of the initial order within thirty days of the entry of the initial order.

(2) The petition for review will specify the portions of the initial order to which exception is taken and will refer to the evidence of record relied upon to support the petition.

(3) Petitions for review shall be filed with the executive director and served on all other parties. The party not filing the petition for review shall have twenty days to reply to the petition for review. The reply shall be filed with the executive director and copies of the reply shall be served on all other parties or their counsel at the time the reply is filed, and may cross-petition for review. If the reply contains a cross-petition, it shall specify portions of the initial order to which exception is taken by the replying party, and shall refer to the evidence of the record relied upon to support the reply.

(4) The board shall personally consider the whole record or such portions of it as may be cited by the parties.

(a) The board shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument.

(b) The board shall enter a final order disposing of the proceeding.

(c) The board shall serve copies of the final order on all parties, the complainant, and the employing agency.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-170, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-170, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-170, filed 10/30/96, effective 11/30/96.]

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**292-100-175 A board member's request for review of initial orders.** (1) Five days after receiving an initial order by an administrative law judge the executive director shall serve a copy of the initial order upon each board member.

(2) A board member who is requesting review of an initial order shall provide written notice to the executive director within thirty days of service on the board member.

(3) Upon receipt of a board member's notice of review the executive director shall serve the notice of review on all other parties.

(4) The board shall personally consider the whole record or such portions of it as may be required for its deliberation.

(a) The board may afford each party an opportunity to present written argument or afford each party an opportunity to present oral argument.

(b) The board shall enter a final order disposing of the proceeding.

(c) The board shall serve copies of the final order on all parties, the complainant, and the employing agency.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-175, filed 6/13/01, effective 7/14/01.]

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**292-100-180 Brief adjudicative proceeding — Authority.** Pursuant to RCW 34.05.482 through 34.05.494, after a finding of reasonable cause and notwithstanding the provision of WAC [292-100-050](#) through [292-100-170](#), the board may provide a brief adjudicative proceeding as set forth in WAC [292-100-190](#) for alleged violations of provisions in chapter 42.52 RCW in which the facts are undisputed, the violations appear to be relatively minor in nature, and the penalty and costs no greater than \$500 will be assessed for the violations.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-180, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-180, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-180, filed 10/30/96, effective 11/30/96.]

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**292-100-190 Brief adjudicative proceeding — Procedure.** (1) A brief adjudicative proceeding may be presided over by the chair, or a member of the board designated by the chair.

(2) When a violation is alleged, before taking action, the executive director shall send the alleged violator notice, which shall include:

- (a) The determination of reasonable cause and the investigative report;
  - (b) The maximum amount of the penalty and costs which can be imposed at the hearing; and
  - (c) Person's right to respond, within twenty days, either in writing or in person to explain his/her view of the matter.
- (3) At the time of the hearing if the presiding officer believes alleged violations no longer meet the criteria in WAC [292-100-180](#), the presiding officer shall immediately adjourn the brief adjudicative proceeding and direct the matter to be scheduled for a public hearing by the full board or an administrative law judge.
- (4) At the time any unfavorable action is taken, the presiding officer shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty and costs imposed and their right to request review by the board.
- (5) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-190, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-190, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-190, filed 10/30/96, effective 11/30/96.]

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**292-100-200 Brief adjudicative proceeding — Administrative review**

**procedures.** (1) The board will conduct a review of the initial order upon the written or oral request of a party if the board receives the request within twenty days after the service of the initial order.

(2) If the parties have not requested review, the board may conduct a review of the initial order upon its own motion and without notice to the parties, but it may not take any action on review less favorable to any party than the original order without giving that party notice and an opportunity to explain that party's view of the matter.

(3) The order on review shall be in writing stating the findings made, and the reasons for the decision, and notice that judicial review is available. The order on review shall be entered within twenty-one days after the date of the initial order or of the request for review, whichever is later.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-200, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-

06-073, § 292-100-200, filed 3/2/99, effective 4/2/99. Statutory Authority: Chapter 42.52 RCW and RCW 42.52.360 (2)(b). 96-22-028, § 292-100-200, filed 10/30/96, effective 11/30/96.]

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**292-100-210 Reconsideration of final orders.** (1) Within ten days of the service of a final order, any party may file a petition for reconsideration as provided in RCW 34.05.470.

(2) Any party may make a motion for reconsideration of a final order of the board as provided in RCW 34.05.470. The request for reconsideration shall be filed at the office of the board and served on the parties no later than ten days after service of the final order. A request or motion for reconsideration shall specify the grounds therefor.

(3) Any party may respond to a request for reconsideration. The response is due no later than ten days after the party is served with the request.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-210, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 99-06-073, § 292-100-210, filed 3/2/99, effective 4/2/99.]

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**292-100-220 Effective date.**

When WAC [292-100-007](#) through [292-100-210](#) go into effect, they will apply to all pending cases.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-100-220, filed 6/13/01, effective 7/14/01.]

## CHAPTER 292-110 WAC AGENCY SUBSTANTIVE RULES

[292-110-010](#) Use of state resources.

[292-110-020](#) Working hours.

[292-110-030](#) Measurable expenditure.

[292-110-050](#) Advisory opinions.

[292-110-060](#) Current state officers and employees contracting with state agencies.

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**292-110-010 Use of state resources.** (1) Statement of principles - stewardship. The proper stewardship of state resources, including funds, facilities, tools, property, and employees and their time, is a responsibility that all state officers and employees share. Accordingly, state employees may not use state resources for personal benefit or gain or for the benefit or gain of other individuals or outside organizations. Personal benefit or gain may include a use solely for personal convenience, or a use to avoid personal expense. Responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state officer and state employee, or with the state officer or state employee who authorizes such use. Employees and officials are cautioned that their own personal use of state resources should never interfere with another state official or employee, or obligate another employee to make personal use of state resources. In addition, state employees have an affirmative duty to ensure that any personal use of state resources is the most efficient in terms of time and resources.

(2) Permitted uses. Use of state resources that is reasonably related to the conduct of official state duties does not violate RCW 42.52.160. In addition, an agency head or designee may authorize a use of state resources that is related to an official state purpose but not directly related to an employee's official duty, for example, conducting an agency combined fund campaign. Such uses shall be specifically authorized in writing and any use shall strictly conform to specific agency guidance.

(3) Permitted uses - under limited circumstances. Extensive or repeated personal misuse of state resources, including state time, significantly undermines public trust in state government. Nevertheless, a very limited personal use of state resources that supports organizational effectiveness would not undermine public trust and confidence. An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee. In addition, and notwithstanding the prohibition in RCW 42.52.160(1), but subject to subsection (6) of this section, a state officer or employee may make an occasional but limited use of state resources only if each of

the following conditions are met:

- (a) There is little or no cost to the state;
- (b) Any use is brief in duration, occurs infrequently, and is the most effective use of time or resources;
- (c) The use does not interfere with the performance of the officer's or employee's official duties;
- (d) The use does not disrupt or distract from the conduct of state business due to volume or frequency;
- (e) The use does not disrupt other state employees and does not obligate them to make a personal use of state resources; and
- (f) The use does not compromise the security or integrity of state property, information, or software.

(4) Permitted use of computers and electronic mail, and the internet. A state officer or employee may use state computers and other equipment to access computer networks or other data bases, including the internet and electronic mail provided such use conforms to ethical standards under subsection (3) of this section, and the use is not otherwise prohibited under subsection (6) of this section. A state officer or employee may use state computers and other equipment to access the internet only if the officer's or employee's agency has adopted a policy governing internet access that is consistent with subsections (3) and (6) of this section.

(5) No expectation of privacy. Electronic mail, facsimile transmissions, and voice mail are technologies that may create an electronic record. This is what separates these from other forms of communication such as a telephone conversation. An electronic record is reproducible and is therefore not private. Such records may be subject to disclosure under the public disclosure law, or may be disclosed for audit or legitimate state operational or management purposes.

(6) Prohibited uses. The state Constitution, state and federal laws, and the Ethics in Public Service Act strictly prohibit certain private activity and certain uses of state resources. Any use of state resources to support such activity clearly undermines public confidence in state government and reflects negatively on state employees generally. This rule explicitly prohibits at all times the following private uses of state resources.

- (a) Any use for the purpose of conducting an outside business or private employment;



(b) Any use for the purpose of supporting, promoting the interests of, or soliciting for an outside organization or group, including, but not limited to: A private business, a nonprofit organization, or a political party (unless provided for by law or authorized by an agency head or designee);

(c) Any use for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Such a use of state resources is specifically prohibited by RCW 42.52.180, subject to the exceptions in RCW 42.52.180(2);

(d) Any use for the purpose of participating in or assisting in an effort to lobby the state legislature, or a state agency head. Such a use of state resources is specifically prohibited by RCW 42.17.190, subject to the exceptions in RCW 42.17.190(3);

(e) Any use related to conduct that is prohibited by a federal or state law or rule, or a state agency policy; and

(f) Any private use of any state property that has been removed from state facilities or other official duty stations, even if there is no cost to the state.

(7) Reimbursement for personal use. Establishing a system for reimbursement for private or personal use of state resources undermines the purpose of the Ethics in Public Service Act and imposes significant administrative burdens on state agencies. However, the board recognizes that in some limited situations, such as officers or employees working at remote locations, a system of reimbursement may be appropriate. Any system of reimbursement must be established by the agency in advance and must result in no cost to the state, including administrative costs. To be valid under this rule, the board must approve any reimbursement system implemented by an agency.

(8) Agency policies encouraged. State agencies are encouraged to adopt policies applying these principles to their unique circumstances. Agency policies that are approved by the board qualify for "safe harbor" under WAC 292-120-035. Nothing in this rule is intended to limit the ability of an agency to adopt policies that are more restrictive. However, violation of a more restrictive agency policy by itself will not constitute a violation of RCW 42.52.160, it would constitute a violation of agency policy.

(9) Frequently asked questions and examples. The board maintains a list of frequently asked questions and examples that provide additional guidance regarding this rule. State officers and employees are encouraged to review this document at the board's web site [www.wa.gov/ethics](http://www.wa.gov/ethics) or to request a copy of the document through the board's office.

Washington State Executive Ethics Board  
2425 Bristol Court SW  
P.O. Box 40149  
Olympia, WA 98504-0149  
Or by electronic mail at: [ethics@atg.wa.gov](mailto:ethics@atg.wa.gov)

[Statutory Authority: RCW 42.52.360 (2)(b), 42.52.160(3). 02-07-074, § 292-110-010, filed 3/18/02, effective 4/18/02; 98-08-054, § 292-110-010, filed 3/27/98, effective 4/27/98. Statutory Authority: RCW 42.52.160(3). 96-01-036, § 292-110-010, filed 12/13/95, effective 1/13/96.]

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**292-110-020 Working hours.** (1) RCW 42.52.180(1) provides that no state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Facilities of an agency includes use of state officers or state employees during working hours. The purpose of the rule is to define the term "working hours" for officers and employees of the executive branch of state government. The prohibition in RCW 42.52.180(1) only applies during working hours. Nothing in RCW 42.52.180(1) or this rule prohibits a state officer or state employee from assisting in a campaign during non-working hours. An officer or employee who assists in a campaign during nonworking hours may not use any facilities of an agency.

(2) Some state officers and state employees occupy positions that have fixed schedules with the same beginning and ending times. For officers and employees with fixed schedules, working hours are the hours between the starting and ending times of their positions. Officers and employees with fixed schedules may not assist in a campaign during these fixed working hours, unless they are on a lunch break under section four of this rule or on annual leave under section five of this rule.

Example 1: An employee works for an agency open to the public during the hours of 8:00 a.m. to 5:00 p.m. The employee is in a position with a fixed schedule of Monday through Friday 8:00 a.m. to 5:00 p.m. The employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 8:00 a.m. or after 5:00 p.m. Monday through Friday or on Saturday or Sunday.

Example 2: An employee works for an agency open to the public during the hours of 8:00 a.m. to 5:00 p.m. Although the agency is open during the hours 8:00 a.m. to 5:00 p.m., the employee is in a position with a fixed schedule of Monday through Thursday 3:00 p.m. through 12:00 a.m. The employee's working hours are 3:00 p.m. to 12:00 a.m. Monday through Thursday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual

leave. The employee may assist in a campaign before 3:00 p.m. or after 12:00 a.m. Monday through Thursday or anytime on Friday, Saturday or Sunday.

(3) Some state officers and state employees occupy positions that do not have fixed schedules with the same starting and ending times. For officers and employees who do not have fixed schedules, working hours are defined as either:

(a) The hours set forth in any policy on working hours adopted by an agency. Agencies have flexibility in determining working hours for the officers and employees to meet their unique needs so long as the time considered to be working hours is clearly established. If an agency does not adopt a working hours policy, working hours shall be 8:00 a.m. to 5:00 p.m. Monday through Friday when state agencies are generally open to the public; or

(b) The work schedule for an officer or employee approved by the agency, if it is different from the agency policy or, if the agency has not adopted a policy, 8:00 a.m. to 5:00 p.m. Monday through Friday.

Example 3: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. Although the agency is open to the public at these times, the work of the agency goes on twenty-four hours a day. The agency has adopted a working hours policy that divides working hours into three shifts: The day shift (8:00 a.m. to 5:00 p.m.); swing shift (3:00 p.m. to 12:00 a.m.) and midnight shift (12:00 a.m. to 9:00 a.m.). An employee without a fixed schedule is assigned to the swing shift (3:00 p.m. to 12:00 a.m.) Monday through Friday. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 3:00 p.m. and sometimes after 3:00 p.m. Similarly, the employee may leave work before or after 12:00 a.m. This employee's working hours are 3:00 p.m. to 12:00 a.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 3:00 p.m. or after 12:00 a.m. Monday through Friday or on Saturday or Sunday.

Example 4: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 8:00 a.m. or after 5:00 p.m. Monday through Friday, or on Saturday or Sunday.

Example 5: An employee works for an agency that is open to the public 8:00 a.m. to

5:00 p.m. Monday through Friday. Although the agency is open to the public at these times, the work of the agency goes on twenty-four hours a day. The agency has adopted a working hours policy that divides working hours into three shifts: The day shift (8:00 a.m. to 5:00 p.m.); swing shift (3:00 p.m. to 12:00 a.m.) and midnight shift (12:00 a.m. to 9:00 a.m.). An employee without a fixed schedule is assigned to the day shift (8:00 a.m. to 5:00 p.m.) Monday through Friday. However, the agency has approved a different work schedule for this employee. Instead of the usual day shift of 8:00 a.m. to 5:00 p.m., the employee works 7:00 a.m. to 4:00 p.m. Since the employee does not have a fixed schedule the employee, sometimes comes to work before 7:00 a.m. and sometimes after 7:00 a.m. Similarly, the employee may leave work before or after 4:00 p.m. This employee's working hours are 7:00 a.m. to 4:00 p.m. Monday through Friday. The employee may not assist in a campaign during these hours unless the employee is on a lunch break or on annual leave. The employee may assist in a campaign before 7:00 a.m. or after 4:00 p.m. Monday through Friday, or on Saturday or Sunday.

(4) Working hours do not include state legal holidays unless the officer's or employee's work schedule requires the officer or employee to work on a state legal holiday.

(5) Working hours do not include the time approved and designated for an officer's or employee's lunch break. A lunch break is between 12:00 p.m. and 1:00 p.m., unless the agency has designated a different time in a working hours policy or has approved a different lunch break as part of an officer's or employee's work schedule. If an officer or employee engages in campaign activity during the lunch break, the officer or employee may not make use of any of the facilities of the agency.

Example 6: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday with a lunch break between 12:00 p.m. and 1:00 p.m. The employee may assist in a campaign during the employee's lunch break between 12:00 p.m. and 1:00 p.m.

(6) Working hours do not include the time in official leave status if the leave has received advance documented or written authorization. An officer or employee on leave may assist in a campaign.

Example 7: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. On Friday the employee receives advance written authorization to be on leave for five days, Monday through Friday of the next week. The employee may assist in a campaign during this leave.

Example 8: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. In this agency employees without fixed schedules take leave during a month and then get written authorization for the leave at the end of the month. An employee takes leave Monday through Friday and assists in a campaign. At the end of the month the employee obtains written authorization for the leave. The employee has assisted in a campaign during working hours since the employee did not obtain written authorization prior to taking leave to assist in a campaign. To assist in a campaign while on leave, the employee must obtain written authorization prior to going on leave.

(7) The definition of working hours also includes any time an officer or employee is actually working. For an officer or employee with a fixed schedule, working hours includes overtime when the officer or employee is working additional hours other than those in the fixed schedule. For an officer or employee without a fixed schedule, working hours include any time the officer or employee is working.

Example 9: An employee works for an agency that is open to the public 8:00 a.m. to 5:00 p.m. Monday through Friday. The agency has not adopted a policy on working hours. An employee without a fixed schedule usually works 8:00 a.m. to 5:00 p.m. Since the employee does not have a fixed schedule, the employee sometimes comes to work before 8:00 a.m. and sometimes after 8:00 a.m. Similarly, the employee may leave work before or after 5:00 p.m. Since the agency has not adopted a policy on working hours, this employee's working hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. On a Monday the employee works from 8:00

a.m. to 9:00 p.m. Even though the employees working hours are 8:00 to 5:00 the time spent working between 5:00 p.m. and 9:00 p.m. are working hours because the employee is working for the agency during this time.

(8) The governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, commissioner of public lands, and the insurance commissioner are state officers in the executive branch subject to RCW 42.52.180. These officers are elected to office and hold office for a term of four years and until their successors are elected and qualified. Since these officers are elected to a term of office, they do not have working hours and may assist in a campaign at any time. However, if these officers do assist in a campaign, they may not make use of any facilities of an agency except as provided in RCW 42.52.180(2).

[Statutory Authority: RCW 42.52.180(1) and 42.52.360 (2)(b). 96-22-030, § 292-110-020, filed 10/30/96, effective 11/30/96.]

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**292-110-030 Measurable expenditure.** (1) RCW 42.52.180(1) provides that no state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Facilities of an agency include, but are not limited to, use of stationery, postage, machines and equipment, use of state employees during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

(2) RCW 42.52.180(2) sets forth exceptions to the prohibition in RCW 42.52.180(1). The exceptions include a statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry without an actual measurable expenditure of public funds (RCW 42.52.180 (2)(b)); activities that are part of the normal and regular conduct of the office (RCW 42.52.180 (2)(c)); and de minimis use of public facilities by statewide elected officials incidental to the preparation or delivery of permissible communications initiated by the official regarding the official's views on a ballot proposition that may foreseeably affect a matter that falls within the official's constitutional or statutory responsibilities (RCW 42.52.180 (2)(d)).

(3) Elected officials regularly expend public funds to respond to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions. RCW 42.52.180 (2)(b) permits elected officials to respond to such inquiries regarding ballot propositions without an actual measurable expenditure of public funds. For purposes of RCW 42.52.180 (2)(b) measurable expenditure means an expenditure or separately identifiable cost or specific portion of a cost

incurred by the agency beyond the normal and regular expenditures or costs incurred by the agency in responding to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions.

Example 1: A statewide elected official conducts a press conference in state office space. During the conference the official is asked about a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. The official replies to the question explaining his or her opinion on the ballot proposition and the reason for the opinion. It is not an ethical violation to reply to such an inquiry. The use of state office space, during the time the official answers the question about the ballot proposition, does not result in a measurable expenditure of public funds. This is because the expenditure or cost of the office space during this period is not a separately identifiable cost.

Example 2: A statewide elected official receives a letter from a constituent asking for the official's position on a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. The official replies by letter explaining his or her opinion on the ballot proposition and the reason for the opinion. In the course of preparing the reply the official has the assistance of staff and uses office space, equipment, stationery and postage. It is not an ethical violation to reply to such an inquiry. There is no measurable expenditure of public funds because the agency has not incurred a cost beyond the normal and regular costs incurred by the agency in responding to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions.

Example 3: A statewide elected official received a letter from a constituent asking for the official's position on a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. The official replies by letter explaining his or her opinion on the ballot proposition and the reason for the opinion. In the course of preparing the reply the official has the assistance of staff and uses office space, equipment, stationery and postage. The official sends copies of the reply to other individuals on the agency mailing list. This is an ethical violation. While it is permissible to reply to the constituent who inquired about the official's position (Example 1), it is improper to send copies of the response to others. There is a measurable expenditure of public funds because the cost of the paper and postage for the additional copies is a separate identifiable cost beyond the normal and regular costs incurred by the agency in responding to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions.

Example 4: A statewide elected official writes a letter to the editor of a newspaper stating the official's position on a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. In the course of preparing the letter the official has the assistance of staff and uses office space, equipment, stationery and postage. This is an ethical violation. The official has used the facilities of the agency and the exception in RCW 42.52.180 (2)(b) does not apply because the official is not responding to an inquiry.

[Statutory Authority: RCW 42.52.180 (2)(b) and 42.52.360 (2)(b). 96-22-029, § 292-110-030, filed 10/30/96, effective 11/30/96.]

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**292-110-050 Advisory opinions.** State officers and employees are encouraged to seek an advisory opinion whenever they have questions concerning ethical standards or potential conflicts of interest. Advisory opinions are intended to provide guidance to a state officer or state employee in advance of an action or decision and thereby prevent ethics violations.

(1) Whenever requested by a state officer, state employee, or other person, or whenever it deems it in the public interest, the board shall issue advisory opinions. Requests for advisory opinions, if not issued in response to a motion by the board, shall be written and signed, and addressed to either the chair of the board or the executive director. Requests may be made by electronic mail. Each request should provide sufficient information and circumstances to enable the board to evaluate the request and issue the advisory opinion.

(2) Upon receiving a request for an advisory opinion, the executive director shall, within fifteen calendar days of receipt, acknowledge the request. Persons requesting advisory opinions shall be notified of the status of the request at thirty day intervals until final action is taken.

(3) The board shall either:

(a) Deny the request and state the reason(s) for the denial; or,

(b) Issue a written advisory opinion.

(4) An advisory opinion is final when it has been approved by the board and is signed by the executive director.

(5) A person requesting an advisory opinion may, upon receiving the opinion, petition the board for reconsideration within thirty days of the date the opinion is issued if the person believes that the opinion is erroneous in factual detail. A petition for reconsideration shall be written and signed, and shall briefly state the



errors of fact. The board may deny the petition if it lacks merit, or if the person who submitted the request provided erroneous information to the board.

(6) If a state officer or state employee receives an advisory opinion and fails to make a good faith effort to follow its guidance, the board shall give this fact weight when considering a complaint alleging a violation based on the advice received.

(7) Informal staff analysis. It is the responsibility of the executive director to provide ethics advice to any state officer, state employee, or other person; however, a state officer, state employee, or other person may only rely on written ethics advice. In providing such advice, the executive director may issue a written nonbinding staff analysis. A nonbinding staff analysis is intended to provide ethics guidance and advice in an expeditious manner, but does not substitute for a formal advisory opinion from the board. The executive director shall provide a disclaimer to the person requesting the nonbinding staff analysis that the advice is solely the opinion of the executive director and not the opinion of the board or in any respect binding on the board. Only advisory opinions issued by the board and complaints decided by the board may be relied on for determining how the board will interpret a provision of the Ethics in Public Service Act.

(a) In considering a complaint alleging a violation, the board will give weight to the fact that the person charged in the complaint relied in good faith on written advice from the executive director.

(b) The board may review staff analyses provided under this subsection and may approve or disapprove of any advice so provided. However, any such approval or disapproval is limited to whether staff had reasonable grounds for the advice and should not be interpreted as indicating approval or disapproval of the advice provided.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-080, § 292-110-050, filed 6/19/01, effective 7/20/01. Statutory Authority: RCW 42.52.360 (2)(b) and (c). 98-03-045, § 292-110-050, filed 1/15/98, effective 2/15/98.]

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**292-110-060 Current state officers and employees contracting with state agencies.** (1) **Purpose** - The primary purposes of the Ethics in Public Service Act are to prevent conflicts of interest that impair the impartial and independent judgment of state officers and employees and the misuse of state position for private gain. Conflicts of interest occur whenever a state officer or state employee:

(a) Has a beneficial interest relating to a matter in which the officer or employee participated in an official capacity;

(b) Accepts outside compensation for the performance or nonperformance of

official duties; or

(c) Accepts or seeks outside compensation from persons that they regulate or conduct state business with.

A misuse of state position occurs whenever a state officer or employee:

(i) Uses his or her official position to influence a contract award; or

(ii) Uses state resources to engage in private work that is not part of official duties.

(2) **Applicable law, standards of review** - RCW 42.52.020 prohibits financial and other interests that conflict with official duties. RCW 42.52.030 prohibits financial and beneficial interests in transactions involving the state. RCW 42.52.030(2) provides alternate conflict of interest provisions related to research and technology transfer agreements at certain institutions of higher education. RCW 42.52.160(1) prohibits the use of state resources for private benefit or gain. RCW 42.52.120(1) prohibits compensation outside of official duties unless certain conditions are met. RCW 42.52.120(2) requires prior board approval of noncompetitive contracts between state officers and employees and any state agency. RCW 42.52.120(3) requires that contracts approved by the board must also be filed with the board within thirty days of execution.

(3) **Approval required** - A state officer or employee must receive board approval before entering into, or obtaining a beneficial interest in, a contract or grant with a state agency only if the process for awarding the contract or grant was not open and competitive, or, whenever only one bid or application was received.

(4) **Application for approval** - State officers and employees seeking the approval of the board for a contract, grant application, or outside employment with a state agency shall provide the following information to the executive director no later than thirty days prior to the commencement of the contract:

(a) A description of current official duties and responsibilities;

(b) A statement of the work to be performed and a copy of the contract;

(c) The duration and dollar value of the contract, if applicable;

(d) A statement that no state resources will be used to perform the outside employment or to fulfill the contract or grant;

(e) A description of how the work will be performed without the use of state resources; and

(f) A statement that the employing agency has reviewed or approved the outside contract under applicable rules or policies, except when requesting a conditional approval as provided in subsection (5)(b) of this section.

(5) **Approval process** - The executive director shall review the contract or grant application terms and related documents and may determine whether there could be a potential conflict with RCW 42.52.120(1) or other applicable provisions of the Ethics in Public Service Act as noted in subsection (2) of this section. If the executive director determines:

(a) There would be no potential conflict under RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW, the executive director shall approve the contract or grant application.

(b) There would be no potential conflict under RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW but the contract or grant has not been approved by the appointing authority pending a board review, the executive director may conditionally approve the contract or grant application; or

(c) There could be a potential conflict under RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW, the executive director shall refer the contract or grant application to the board for approval or disapproval.

(6) **Contract amendments** - If a contract has been amended or the scope of work altered, and the effect of the amendment or alteration may create a potential conflict of interest under RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW, the employee must resubmit the contract to the board at least fifteen days prior to commencement of work under the amended or altered contract.

(7) **Series of similar contracts** - If a state officer or employee anticipates receiving a series of substantially identical contracts or grants with a state agency is anticipated, they may request that the board preapprove such contracts or grants. Preapproval shall be effective for the period of one calendar year, after which the state officer or employee shall resubmit the request.

(8) **Exemptions, preapproved contracts or grants** - An employee who has a contract or grant or a beneficial interest therein which is preapproved by the board under this section is not required to file an application for approval of the contract. However, the employee is responsible for determining that the contract or grant would not conflict with RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW. Provided that the applicable conditions in RCW 42.52.120(1) are met, the following contracts are approved by the executive ethics board:

(a) A contract or grant whereby the state officer or state employee receives assistance through state programs or federal programs administered by the state

when they are entitled to receive such assistance by law and on the same basis as similarly situated citizens, and when the officer or employee does not exercise discretionary judgment with regard to an assistance program for which he or she is otherwise eligible;

(b) A contract to perform teaching duties at a bona fide community college, vocational-technical school, or institution of higher learning, provided no state resources are used to perform the duties; there is no conflict with the performance of official duties; and the state officer or state employee did not use his or her official position to influence the contract of employment;

(c) A contract held by a spouse, in which the officer or employee has a beneficial interest, with a state agency, provided that the officer or employee did not participate in the contract;

(d) A contract that was received by an officer or employee of an institution of higher education to provide expert witness services in state litigation provided no higher education resources are used to perform the duties; there is no conflict with the performance of official duties; and the officer or employee did not use his or her official position to influence the contract; and

(e) A contract or grant that was received by an officer or employee of an institution of higher education or of the Spokane Intercollegiate Research and Technology Institute under conditions that complied with RCW 42.52.030(2). At the request of the institution the board may advise the institution if a specific contract or grant would raise significant conflict of interest concerns under applicable provisions of chapter 42.52 RCW.

(9) **Filing required** - Final contracts reviewed under this rule shall be filed with the executive director within thirty days of execution. An employee who is awarded a contract or grant preapproved under subsection (8)(a) through (c) of this section shall file a copy of the contract with the board.

(10) **Filing exemptions** - An officer or employee of an institution of higher education or of the Spokane Intercollegiate Research and Technology Institute who is awarded a contract or grant preapproved under subsection (8)(d) or (e) of this section is not required to file a copy of the contract or grant with the board. A copy of all expert witness contracts awarded under subsection (8)(d) of this section shall be maintained by the office of the attorney general subject to review by board staff. Those state institutions of higher education or the Spokane Intercollegiate Research and Technology Institute who award contracts or grants under RCW 42.52.030(2) shall maintain copies of all contracts or grants approved under subsection (8)(e) of this section. In lieu of filing the contracts with the board, these institutions shall provide the board by September 1 of each year a brief summary of all such contracts or grants awarded in the previous fiscal year.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.120(2). 04-18-019, § 292-110-060, filed 8/23/04, effective 9/23/04. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-080, § 292-110-060, filed 6/19/01, effective 7/20/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-04-001, § 292-110-060, filed 1/21/98, effective 2/21/98.]

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## CHAPTER 292-120 WAC EXECUTIVE ETHICS BOARD — PENALTY RULES

[292-120-010](#) Purpose.

[292-120-020](#) Board may impose sanctions.

[292-120-030](#) Criteria for determining sanctions.

[292-120-035](#) Safe harbor provision.

[292-120-040](#) Payment of civil penalty.

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**292-120-010 Purpose.** The purpose of this rule is to set out the criteria that the board may consider when imposing sanctions for a violation of chapter 42.52 RCW and the rules adopted under it.

[Statutory Authority: RCW 42.52.360 (2)(e)-(g). 97-07-058, § 292-120-010, filed 3/18/97, effective 4/18/97.]

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**292-120-020 Board may impose sanctions.** If the board finds a violation of chapter 42.52 RCW or rules adopted under it, the board may impose one or more of the following sanctions:

- (1) Reprimand, either by letter of instruction or formal reprimand;
- (2) Recommend to the appropriate authorities suspension, removal from the position, or prosecution or other appropriate remedy;
- (3) A civil penalty of up to five thousand dollars per violation or three times the economic value of any thing sought or received in violation of chapter 42.52 RCW or rules adopted under it, whichever is greater. Payment of the civil penalty shall be reduced by the amount of costs paid pursuant to subsection 5;
- (4) Payment of damages sustained by the state that were caused by the violation and were not recovered by the state auditor;
- (5) Costs, including reasonable investigative costs, that do not exceed the amount of any civil penalty;
- (6) Recommend to the governor and the appropriate agency that they request the attorney general bring an action to cancel or rescind action taken by the violator, upon a board finding that:
  - (a) The violation has substantially influenced the state action; and

- (b) Interests of the state require cancellation or rescission.

[Statutory Authority: RCW 42.52.360 (2)(e)-(g). 97-07-058, § 292-120-020, filed 3/18/97, effective 4/18/97.]

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**292-120-030 Criteria for determining sanctions.** In determining the appropriate sanction, including the amount of any civil penalty, the board may consider the nature of the violation and the extent or magnitude or severity of the violation, including:

- (1) The monetary cost of the violation including:
  - (a) The cost of the violation to the state;
  - (b) The value of anything received or sought in the violation;
  - (c) The amount of any damages incurred by the state as a result of the violation;
  - (d) The costs incurred in enforcement, including reasonable investigative costs;
- (2) The nature of the violation including whether the violation:
  - (a) Was continuing in nature;
  - (b) Was motivated by financial gain;
  - (c) Involved criminal conduct;
  - (d) Impaired a function of the agency;
  - (e) Tended to significantly reduce public respect for or confidence in state government or state government officers or employees;
  - (f) Involved personal gain or special privilege to the violator;
- (3) Aggravating circumstances including whether the violator:
  - (a) Intentionally committed the violation with knowledge that the conduct constituted a violation;
  - (b) Attempted to conceal the violation prior to the filing of the complaint;
  - (c) Was untruthful or uncooperative in dealing with the board or the board's staff;

- (d) Had significant official, management, or supervisory responsibility;
- (e) Had committed prior violations found by the board;
- (f) Incurred no other sanctions as a result of the violation;
- (4) Mitigating factors including:
  - (a) Prior corrective action taken against the violator;
  - (b) Prior recovery of damages to the state;
  - (c) The unethical conduct was approved or required by the violator's supervisor;
  - (d) The violation was unintentional;
  - (e) Other mitigating factors deemed relevant by the board.

(5) For purposes of this section, each act which violates one or more provisions of chapter 42.52 RCW, or rules adopted under it, may constitute a separate violation.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 02-04-003, § 292-120-030, filed 1/23/02, effective 2/23/02. Statutory Authority: RCW 42.52.360 (2)(e)-(g). 97-07-058, § 292-120-030, filed 3/18/97, effective 4/18/97.]

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**292-120-035 Safe harbor provision.** The board invites and encourages agencies to adopt policies that prevent agency employees from violating the Ethics in Public Service Act. Pursuant to RCW 42.52.360(4), the board may review and approve agency policies. In determining appropriate sanctions, the board may consider agency policies in effect at the time of the conduct. In addition:

(1) The board will not impose sanctions for conduct that would violate the Ethics in Public Service Act, if the conduct at issue was permitted under a board-approved agency policy, as provided for in RCW 42.52.360(4), prior to the conduct occurring.

(2) The effect of the safe harbor from sanction, as provided in WAC [292-120-035](#)(1), shall be limited to conduct that conforms to a board-approved agency policy.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 02-04-003, § 292-120-035, filed 1/23/02, effective 2/23/02.]



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**292-120-040 Payment of civil penalty.** Payment of any monetary penalty assessed by the board must be made within 45 days of the date of the board's order, unless an extension is granted by the board.

[Statutory Authority: RCW 42.52.360 (2)(e)-(g). 97-07-058, § 292-120-040, filed 3/18/97, effective 4/18/97.]

## CHAPTER 292-130 WAC AGENCY ORGANIZATION — PUBLIC RECORDS

- [292-130-010](#) Purpose.
- [292-130-020](#) Function -- Organization -- Office.
- [292-130-030](#) Operations and procedures.
- [292-130-040](#) Executive director.
- [292-130-050](#) Public records -- Availability.
- [292-130-060](#) Index prior to January 1, 2001.
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- [292-130-070](#) Public records -- Officer.
- [292-130-080](#) Hours for seeking public records.
- [292-130-090](#) Requests for public records.
- [292-130-100](#) Response to public records requests.
- [292-130-110](#) Copying fees.
- [292-130-120](#) Protection of public records.
- [292-130-130](#) Exemptions.
- [292-130-140](#) Review of denials of public records request.

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**292-130-010 Purpose.** The purpose of this chapter is to provide rules implementing RCW 34.05.220 and 42.17.250 through 42.17.320 for the executive ethics board.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-010, filed 11/3/98, effective 12/4/98.]

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**292-130-020 Function — Organization — Office.** The executive ethics board was created by chapter 42.52 RCW to enforce the state's ethics law and rules adopted under it with respect to statewide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

The executive ethics board consists of five members, appointed by the governor as follows: One member shall be a classified service employee; one member shall be a state officer or state employee in an exempt position; one member shall be a citizen selected from a list of three names submitted by the attorney general; one

member shall be a citizen selected from a list of three names submitted by the state auditor; and, one member shall be a citizen at large selected by the governor.

The board's administrative office is located at 2425 Bristol Court S.W. 1st Floor, P.O. Box 40149, Olympia, WA 98504-0149. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday except legal holidays and during regularly scheduled board meetings.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-020, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-020, filed 11/3/98, effective 12/4/98.]

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**292-130-030 Operations and procedures.** The board holds regular scheduled meetings on the second Friday of each month at 9:00 a.m. unless a different time is noted on the agenda, except August and December when no meetings are held. The meetings are held at 2425 Bristol Court, Conference Room 148, unless circumstances require relocating to another site as designated by the executive director of the board.

All meetings are conducted in accordance with the Open Public Meetings Act (chapter 42.30 RCW). Three members of the board constitute a quorum. Any matter coming before the board may be decided by a majority vote of those members present and voting. Minutes shall be taken at all meetings.

The board issues advisory opinions; develops education and training materials; investigates, hears, and determines complaints; reviews and approves agency ethics policies; and, reviews, approves, or denies contracts between state officers and employees and state agencies.

Written communications intended for board consideration or action shall be filed with the administrative office.

[Statutory Authority: RCW 42.52.360 (2)(b). 05-19-142, § 292-130-030, filed 9/21/05, effective 10/22/05. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-030, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-030, filed 11/3/98, effective 12/4/98.]

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**292-130-040 Executive director.** The executive director shall perform the following duties under the general authority and supervision of the board:

- (1) Make initial determinations, pursuant to RCW 42.52.425 and WAC 292-100-

045, regarding complaints received by the board;

(2) Render informal nonbinding advice, pursuant to RCW 42.52.360 (2)(b) and (c) and WAC 292-110-050;

(3) Make initial determinations, pursuant to RCW 42.52.120 and WAC 292-110-060, regarding approval of certain contracts between state agencies and state officers or employees;

(4) Act as records officer and administrative arm of the board;

(5) Coordinate the policies of the board and the activities of board staff, supervise board staff as appropriate;

(6) Act as a liaison between the board and other public agencies; and

(7) Conduct ethics training and information outreach.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-040, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-040, filed 11/3/98, effective 12/4/98.]

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**292-130-050 Public records — Availability.** Public records are available for inspection and copying except as otherwise provided by RCW 42.17.310 and chapter 292-100 WAC.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-050, filed 11/3/98, effective 12/4/98.]

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**292-130-060 Index prior to January 1, 2001.** Prior to January 1, 2001, the board indexed by subject matter the advisory opinions of the board. The index is maintained in the administrative office and is accessible at the board's web site located at [www.wa.gov/ethics](http://www.wa.gov/ethics).

The volume of correspondence managed by the office is such that it would be unduly burdensome to formulate and maintain an index of all correspondence. In lieu of an index, the following filing system is utilized at the board's administrative office:

(1) Complaints received by the board are indexed by year, number, and name of the respondent and agency.

(2) Whistleblower referrals from the state auditor are indexed by whistleblower

case number.

(3) Contract approvals are filed by year and name of the state employee.

(4) Agency ethics policies are filed by agency name.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-060, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-060, filed 11/3/98, effective 12/4/98.]

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**292-130-065 Index after January 1, 2001.** The board has indexed by subject matter the advisory opinions of the board. The index is maintained in the administrative office and is accessible at the board's web site located at [www.wa.gov/ethics](http://www.wa.gov/ethics).

The volume of correspondence managed by the office is such that it would be unduly burdensome to formulate and maintain an index of all correspondence. In lieu of an index, the following filing system is utilized at the board's administrative office:

(1) Complaints, including referrals from the state auditor, received by the board are indexed by year, month, day, and sequential number. Complaints that are referred for full investigation are indexed by year and sequential case number.

(2) Requests for advisory opinions, including informal staff analysis, are indexed by year, month, day, and sequential number. Advisory opinions issued by the board are indexed by year and sequential opinion number.

(3) Requests for contract approvals, under WAC 292-110-060 are indexed by year, month, day, sequential number and name of the state employee.

(4) Requests for board review of agency ethics policies, filed under RCW 42.52.360(4) are indexed by year, month, day, and sequential number. Agency ethics policies that are approved by the board are indexed by year, month, day, sequential policy number, and agency name.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-065, filed 6/13/01, effective 7/14/01.]

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**292-130-070 Public records — Officer.** The public records officer for the board shall be the executive director to the board.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-

070, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-070, filed 11/3/98, effective 12/4/98.]

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**292-130-080 Hours for seeking public records.** Public records shall be available for inspection and copying from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays and during regularly scheduled board meetings.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-080, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-080, filed 11/3/98, effective 12/4/98.]

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**292-130-090 Requests for public records.** Chapter 42.17 RCW requires that agencies protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency; therefore, public records may be inspected or copied or copies of such records obtained, upon compliance with the following procedure:

(1) A request shall be made in writing either via electronic mail or in writing upon a form prescribed by the administrative office. The form shall be presented to the public records officer, or to a member of the staff designated by him or her if the public records officer is not available, during office hours. The request shall include:

- (a) The name of the person requesting the record;
- (b) The calendar date on which the request was made;
- (c) A description of the record or records requested.

(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or designated staff member to whom the request is made to assist in appropriately identifying the public record or public records requested.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-090, filed 11/3/98, effective 12/4/98.]

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**292-130-100 Response to public records requests.** (1) The administrative office shall respond promptly to requests for disclosure. Within five business days of receiving a public records request, the office will respond by:

- (a) Providing the record;

(b) Acknowledging that the office has received the request and providing a reasonable estimate of the time the office will require to respond to the request; or

(c) Denying the public records request.

(2) Additional time for the office to respond to a request may be based upon the need to:

(a) Clarify the scope of the request;

(b) Locate and assemble the information requested;

(c) Notify third persons who may be named in a record; or

(d) Determine whether any or all of the information requested is exempt and that a denial should be made as to all or part of the request.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-100, filed 11/3/98, effective 12/4/98.]

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**292-130-110 Copying fees.** No fees shall be charged for the inspection of public records. The office will charge one dollar for the first ten pages and ten cents per copy for additional pages for requests made under this chapter. The public records officer may waive the fees for copies when the expense of processing the payment exceeds the cost of providing the copies. These charges are necessary to reimburse the office for the costs of providing copies of public records and use of the copying equipment. The office may require that all charges be paid in advance of release of the copies.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-110, filed 11/3/98, effective 12/4/98.]

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**292-130-120 Protection of public records.** (1) No person shall knowingly alter, deface, or destroy public records of the office.

(2) Original copies or portions thereof of public records of the office shall not be removed from the premises.

(3) Care and safekeeping of public records of the office, furnished pursuant to a request for inspection or copying, shall be the sole responsibility of the requestor.

(4) Records furnished for public inspection or copying shall be returned in good condition and in the same sequence or organization as when furnished.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-120, filed 11/3/98, effective 12/4/98.]

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**292-130-130 Exemptions.** (1) The board reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC [292-130-060](#) is exempt under the provisions of RCW 42.17.310.

(2) It is the policy of the board during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.17.310 (1)(d). The investigation is not considered complete until a case is resolved either by a stipulation and settlement that is signed by all parties; or, when the board enters a final order after a public hearing. If a public records request is made following a signed stipulation and settlement or a final order for any such record which implicates the privacy of an individual, written notice of the records request will be provided to the individual in order that such individual may request a protective order from a court under RCW 42.17.330. The following records are not considered part of the investigation file and are releasable upon request:

- (a) Complaints, upon receipt by the respondent;
- (b) The board staff's preliminary review or investigation report;
- (c) The board's findings of reasonable cause or no reasonable cause; and
- (d) Proposed stipulations and settlements, upon receipt by the board.

(3) In addition, pursuant to RCW 42.17.310, the board reserves the right to withhold or delete information when it makes available or publishes any public record in any cases where there is reason to believe that disclosure of such details would be otherwise exempt from disclosure under chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(4) Any denial of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.

[Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. 01-13-033, § 292-130-130, filed 6/13/01, effective 7/14/01. Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-130, filed 11/3/98, effective 12/4/98.]



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**292-130-140 Review of denials of public records request.** (1) Any person who objects to a denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the chair of the board. The chair shall immediately consider the matter and either affirm or reverse such denial or call a special meeting of the board as soon as legally possible to review the denial.

[Statutory Authority: RCW 42.52.360 (2)(b). 98-22-072, § 292-130-140, filed 11/3/98, effective 12/4/98.]